

NON-SMOKERS RIGHTS ACT OF 1985

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1440

TO RESTRICT SMOKING TO DESIGNATED AREAS IN ALL UNITED STATES
GOVERNMENT BUILDINGS

SEPTEMBER 30, OCTOBER 1 AND 2, 1985

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NON-SMOKERS RIGHTS ACT OF 1985

MONDAY, SEPTEMBER 30, 1985

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10:08 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens, chairman of the subcommittee, presiding.

Present: Senators Stevens and Gore.

Staff present: Wayne A. Schley, staff director; Susan Arnold, legislative assistant; Pat Phillips, chief clerk; Ruth Wheeler, professional staff assistant; Thurgood Marshall, Jr., minority staff director and counsel; Jim Jensen, investigator; Kim Weaver, staff assistant.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning. I am happy to see you all here today. This is the first of 3 days of hearings on S. 1440, the Non-Smokers Rights Act of 1985.

A growing body of scientific evidence about the adverse health effects of so-called secondhand smoke convinced me that it is time for the Federal Government to take preventive action to protect the health of nonsmoking Federal workers. My bill has nothing to do with banning smoking or with legislating morality by telling individuals not to smoke. Rather, my bill assures smokers of a place to smoke where they don't need to worry about offending or harming their nonsmoking coworkers.

A number of public polls—the most recent one completed by Lou Harris this summer—indicate that a majority of smokers support the idea of separate smoking and nonsmoking areas. Nonsmokers, who have chosen to avoid the health hazards of smoking, are increasingly concerned about the potential risks of prolonged exposure to secondhand smoke.

Organizations of nonsmokers are successfully advocating smoking restriction policies at the State and local level. Some 37 States now have policies in effect which restrict smoking in a variety of public places, including many places of employment. An initiative to restrict smoking in Federal Government buildings, which house over 3 million Federal employees, is, in my opinion, called for.

In the next few days, we will hear from a variety of experts involved in the smoking issue: public health officials, environmental pollution specialists, economists, administrators, and grassroots ad-

vocates of smoking restriction policies. We will also hear from the tobacco industry as well as from Federal union representatives.

Designated smoking area policies have proven self-enforcing. Violations of Minnesota's Clean Indoor Air Act, which has been in place for 10 years now, or of the State of Alaska's law, or of municipal ordinances in places like San Francisco, or of Boeing or Pacific Bell's policies, are virtually nonexistent. No city, State, or industry which has implemented a smoking restriction policy has ever needed to repeal it.

These policies work because they have the support of both non-smokers and smokers. As I announced last week in the Congressional Record, I will move to delete section 3(c)(1) of S. 1440, which calls for a fine for violation of the designated smoking area rule.

I believe the threat of a fine is irrelevant to the success of the designated smoking area policy.

Again, I want to thank you for being here. Just as a side note, I would remind you that this committee room was closed to smoking before this hearing was even thought of. That was a decision made 3 years ago. So I would remind you of that. The designated concept has already started.

Our first witness is my good friend, Joe Califano, who I think has spoken out ahead of most people on this subject. We are happy that you took the time to come see us today.

**TESTIMONY OF HON. JOSEPH A. CALIFANO, DEWEY,
BALLANTINE, BUSHBY, PALMER & WOOD**

Mr. CALIFANO. Mr. Chairman, thank you very much for the invitation to testify.

I appreciate the opportunity to appear before this committee on the Non-Smokers Rights Act of 1985. Mr. Chairman, this bill, which you have introduced—by requiring that all Federal agencies restrict to limited areas any smoking in their buildings—will help propel us into a second major phase in the Nation's progress to a smoke-free society.

Twenty-one years ago, Luther Terry issued the first Surgeon General's Report on Smoking and Health. That report found cigarettes guilty of murder and mayhem by cancer, heart disease, emphysema, and chronic bronchitis.

The evidence in that first report has grown to an avalanche of data, detailing with grisly precision the toll of cigarette smoking. It causes at least 360,000 deaths each year, 170,000 from heart disease, 130,000 from cancer, and 60,000 from chronic lung diseases, including: 80 to 85 percent of all deaths from lung cancer; 40 to 60 percent of bladder cancers among men, and 25 to 35 percent among women; up to 84 percent of cancer of the larynx; up to 90 percent of the deaths from chronic lung disease; and 40 percent of the deaths from coronary heart disease. Smoking is a major factor in cancer of the mouth and esophagus and has been related to kidney cancer and cancer of the cervix.

The total financial cost of cigarette smoking is about \$65 billion each year—more than \$2 for every pack of cigarettes consumed. The cost in personal anguish, suffering and needlessly lost lives is incalculable.

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As the damage that cigarette smoking does to our health has become clear, the proportion of adult smokers has gone down.

In 1965, more than half of the adult men in this country smoked; today, it is just over one-third. The proportion of women who smoke has also declined, although not nearly as rapidly, from 34 to 29 percent. Smoking among teenagers has dropped dramatically since the late 1970's.

Per capita cigarette consumption has been falling steadily since 1973. For the first time in 2 decades, total cigarette consumption fell 2 years in a row in 1982 and 1983. These declines have taken place in spite of the tobacco industry's record-breaking levels of advertising, which reached more than \$2.5 billion in 1983.

Now, Mr. Chairman, a new wave of evidence is revealing the dangers of involuntary secondhand smoking—dangers that require a new set of Government responses. Studies in Japan, Germany, Hong Kong, Greece, Scotland, and the United States point to a clear relationship between exposure to other people's cigarette smoke and lung cancer. Just this month, the American Cancer Society reported that when a woman's husband smokes a pack of cigarettes a day, she doubles her chances of getting lung cancer. A study sponsored by the National Institute of Environmental Health Sciences found evidence that nonsmokers exposed to the smoke of others have an increased risk not only of lung cancer, but of breast cancer, cervical cancer, and leukemia, as well.

Mr. Chairman, there is tremendous fear in this Nation about AIDS, and it is a very grave problem. We have not yet found a cure for this terrible disease, but we have no excuse where smoking is concerned. Because we deny people smoke-free space, cigarette smoking is turning cancer into America's top and most deadly contagious killer. Tobacco smoke breathed by nonsmokers is already killing 5,000 people each year, according to Environmental Protection Agency researcher James Repace, far more than the combined deaths from all industrial emissions regulated by the EPA.

Last year, U.S. Surgeon General Dr. C. Everett Koop wrote that, "There is all the medical evidence necessary," to protect the nonsmoker against "the irritation and potential harm that comes from other people's smoke."

Dr. Koop noted that "pollution from tobacco smoke in homes, offices, other worksites and in certain public places can reach levels which exceed contaminant levels permitted under environmental and occupational health safety regulations. Because Dr. Koop is concerned about the increasing evidence "that environmental tobacco smoke can bring about disease, including lung cancer, in healthy persons, including infants and children," Dr. Koop advises nonsmokers "to avoid exposure to cigarette smoke wherever possible" and particularly urges that children and infants be protected from involuntary smoking.

The number of States that have overcome the well bankrolled efforts of the tobacco lobby and restricted smoking in public places has been steadily rising, as you have noted, Mr. Chairman. Twenty-eight States now limit or ban smoking in health facilities; 17 States restrict smoking in public buildings; 14 in restaurants; 11 in government workplaces and 8 in private workplaces. Scores of towns, cities, and counties have enacted such laws even in States which

have not yet moved to restrict smoking in enclosed places. The self-serving advertising campaign of the Reynolds Tobacco Co. against smoke-free space attests to the impact of such policies in reduced smoking.

The issue is not smokers' rights; the issues are whether we intend to protect nonsmokers from involuntarily breathing tobacco smoke, whether we care enough about our fellow human beings who smoke to encourage them to stop killing themselves, and whether we are serious about the billions of dollars in health care costs smoking causes. Cigarette smoking is slow-motion suicide. It is tragic when people do it to themselves, but it is inexcusable to allow smokers to commit slow-motion murder.

As Secretary of HEW, I issued an order requiring that each employee's right to smoke-free space be recognized. After a few shake-down weeks, all employees, smokers and nonsmokers alike, not only lived with it, they reported they were much happier than before.

In April 1984, Malcolm T. Stamper, president of the Boeing Co., established a corporate policy to create a smoke-free workplace. As an initial step; Boeing prohibited smoking in common areas throughout the workplace such as hallways, restrooms, lobbies, libraries, and computer rooms. When Stamper first put this policy in place, he expected resistance from workers and the union. Instead, he got acceptance and appreciation. Many companies have strictly limited smoking to designated areas. Workplace nonsmoking policies make health and business sense, because smokers are significantly less productive and far more accident and illness prone. The short-term costs to business of smoking employees are estimated at \$300 to \$350 per year, with long-term effects on productivity, absenteeism and premature death raising this to about \$1,000 per smoking employee per year.

Mr. Chairman, I have one suggestion for your consideration as you continue deliberations on this legislation: I suggest you stipulate that when disputes arise from policies established under the act, that the rights of the nonsmoker take precedence. This has been effective in a number of State and local statutes.

Surgeon General Koop has called on Americans to create a smoke-free society by the year 2000. Passing this legislation will send a powerful signal through every Federal courthouse, through every one of Social Security's 1,300 field offices, through every House and Senate hearing room and throughout 30,000 post offices—that the health hazards of secondhand smoke are real and require protective measures. It will ensure a healthier Federal workplace and a safer, more pleasant atmosphere for our citizens who visit Federal offices.

Mr. Chairman, let me conclude by congratulating you on your courage and your commitment to the health and safety of our people in sponsoring this bill and holding these hearings.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, Mr. Califano. You are with Chrysler Corp, aren't you?

Mr. CALIFANO. Yes; I am.

Senator STEVENS. What are you doing about smoking?

Mr. CALIFANO. We have begun to put in a smoke-free place policy. We have also started to provide our employees with incentives to quit smoking, for example, financial incentives. Last year, the life insurance policy premiums for smokers was raised to 75 percent above that over the life insurance policy premiums for non-smokers, and we are mounting a campaign in all our publications to encourage our people to stop smoking.

Senator STEVENS. We appreciate your testimony. I know you are counsel for the Postal Service Board of Governors. Some people have urged us to exempt the Postal Service from this bill. As you know they are, unless we specifically include them, according to the advice of our counsel.

Do you see any reason why they should be exempted?

Mr. CALIFANO. No. Indeed, I am surprised. The Postal Service has regulations relating to employee workspace which limit smoking in employee workspace. I would think that they should accord the public the same kind of protection they accord their own workers.

So I would urge that they be included.

Senator STEVENS. Let me ask you just a general question. You followed the whole development of this trend in the country and started it, really, when you were Secretary of HEW.

Do you know of any instance where a concept like that suggested in my bill has ever been reversed?

Mr. CALIFANO. No. Indeed, I know of no instance. In the State and local areas, where it has passed, this legislation has not been repeated.

Senator STEVENS. Many areas have been designated. I was in a hotel of a major chain just 2 weeks ago, and I was very pleased to see when I went in the morning, to the breakfast room that there were a designated smoking and nonsmoking areas. It is done by company policy without regard to State law.

But I don't know of any instance where, this step having been taken, there was any pressure from smokers or from people affected who said, "This is not a good thing." That has reversed; they want the designated concept—the designated smoking and non-smoking areas that have been put into effect. It has worked.

Mr. CALIFANO. It has worked, and at HEW, as I said, we had praise from both smokers and nonsmokers alike. It has worked in restaurants. I notice that the Mayor of New York asked that the restaurants in New York now voluntarily establish smoke-free places.

I think the only objections have come from the tobacco industry, and I think the reason is that when these policies are put in place, people have frequently quit smoking, and they smoke less.

Senator STEVENS. Staff has indicated to me that if people who smoke one cigarette less a day for a year, that is 22 billion fewer cigarettes that would be smoked in this country, and that is big bucks for tobacco magnates and tobacco companies. I think that is why they are the last holdout in opposing this policy.

We appreciate your taking the time to be the leadoff witness in these hearings. I commend you on your pursuit of the same goal.

Mr. CALIFANO. Thank you very much.

Senator STEVENS. Thank you very much.

Our next witness is Bill Ross, commissioner of the State of Alaska's Department of Environmental Resources. Good morning.
Good morning, Bill.

**TESTIMONY OF WILLIAM A. ROSS, COMMISSIONER, ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION, JUNEAU, AK**

Mr. Ross. Good morning, Mr. Chairman.

Mr. Chairman, it is a pleasure to be here today to testify before the committee. The Alaska State law¹ is modeled very much on the legislation that you have introduced, and I think, therefore, our experiences in Alaska may very well be pertinent to the committee as you collaborate on this legislation.

For example, we have, in the Alaska State law, the same findings that you gave with your proposed legislation. For example, the studies have shown that secondhand smoke is a health hazard, that there are recent court decisions recognizing the emerging rights of nonsmokers or a smoke-free work environment, and that smoking, in and of itself, results in tremendous costs that have to be absorbed by the public or by employees of people who do smoke.

In preparing for my testimony, I went over and looked through the debate that occurred in the Alaska State Legislature. Two things sort of came to mind that I thought I would share with you today. One was the clash between the rights of smokers, who have chosen to engage in smoking, and the rights of nonsmokers to have a smoke-free environment, and in particular, out of public places. It seems, then, that the burden has been placed on proprietors of these facilities or owners of buildings and whatnot to often mediate the conflicts that come up between these conflicting individual rights.

So the nuisance associated with smoke, as well as the obligation of Government to protect the public health, particularly in public places, is joined, then, with the responsibility to balance conflicting rights, and it is those two public policies that joined together and caused Alaska to enact legislation which restricted smoking to certain places.

It is important to note that the way in which Alaska chose to do it is also the same way that you have outlined in S. 1440, which is to provide reasonable accommodations between the rights of smokers and nonsmokers. As one might expect, the definition of reasonable is not provided by law, particularly since it doesn't have a sense of the sites specific associated in working out, on a case-by-case basis, what might be the reasonable accommodation that is necessary to protect nonsmokers from invasion of smoking by those who are still engaging in that act.

The Alaska situation provides that no smoking is, indeed, the rule in a host of public places; for example, grocery stores, restaurant that seat more than 50 people, day care centers, and State or public buildings. However, there are exemptions that can be provided as long as reasonable accommodation is given to the needs of the nonsmokers.

¹ See p. 364.

In comparison with S. 1440, I would like to just run through the State law. Certainly the State law is broader. It does cover things other than State-owned buildings, whereas your legislation is restricted to those Federal buildings. S. 1440 provides that smoking areas have been accommodated under the reasonable accommodation approach, whereas the Alaska law is somewhat different. If it cannot accommodate smokers, no smoking is the rule.

However, S. 1440 implies that there will always be a reasonable balance that smokers can smoke; they will just be segregated in some fashion from the nonsmokers.

We have a set of violations. People can be prosecuted for smoking in no-smoking areas, and proprietors can be prosecuted for not posting smoking and no-smoking signs in accordance with law.

However, we do not have the opportunity to enforce against whatever reasonable accommodation was provided. So the Government does not enter in and decide whether or not reasonable accommodation has, indeed, been provided. It merely assures that that act has been done by the proprietor in question.

Your statute gives to whoever is responsible for implementing it the powers to develop regulations. We do not have that power under State law, and hence, I think that you would be able to line out regulations that talk about what reasonable accommodation is. I think that is one of the strengths of your legislation. In the absence of that, again, we can have reasonable going all over the map.

An example I would like to share with you that I think is very pertinent, particularly in your questioning of Mr. Califano, is what we had to do on the basis of, in State buildings, what probably in tradition will be seen as a labor-management issue as to how smoking and nonsmoking should be accommodated. How should reasonable accommodation be made?

It turned out that both union and management had no real desire to mix it up with each other on this. There were smokers in both camps. There were nonsmokers in both camps and this issue transcended traditional lines of responsibility and conflict.

What came up, then, was a joint committee. We had regional committees, and we had a statewide committee and it elicited all the way from the workplace up to the commissioner level. A five-fold test, in effect, was established starting with that which would provide the most protection leading down to that which would provide the least.

In our case, if no protection could be provided, then no smoking would be instituted. For example, the first thing that any reasonable accommodation approach should look for is to see if there is a room that would be designated nonsmoking which is vented to the outside. Failing that have a separate room that is not vented to the outside but is, indeed, completely isolated from the rest of the workplace. The third step would be physical separation with some smoke reduction equipment. The fourth would be a physical separation with no smoke reduction equipment, and again, if we couldn't find even that in the workplace, then you would institute no smoking, or if there was an employee who had a certain viable medical problem on the basis of secondhand smoke, then that would trigger no smoking, as well.

The impacts of the State law which was passed in 1984, I think, are real interesting. Again, they are probably pertinent to your legislation. After it was passed, there was an initial flurry and a lot of activity. There was confusion: "What does it mean?" Nonsmokers were wondering if this meant they could go in and demand that there be no smoking. Smokers wondered if that meant that was it, that outside their home, they couldn't smoke anymore.

So our department had a lot of responsibilities at first. That has dramatically tapered off. It has gotten more routine in the posting of signs and making decisions about what is or is not an accommodation. That puts up in education an important aspect in legislation of this type, as opposed to a strong enforcement role, the need to have a complex set of regulatory responsibilities outlined. It is more a question of working with people and showing them how, merely through the segregation of the posting process, you can, indeed, separate these two groups, minimize the conflict, and achieve your public health standards at the same time.

Of particular note is that it has not been necessary to redesign buildings, to provide major structural modifications through investment of capital equipment. You can, indeed, provide a kind of separation that the law intended merely by moving smokers to one area and nonsmokers to another.

We have found, however, that some enforcement has been useful. We have had minimal enforcement. We have had four cases go to small claims court, and we have had one person be issued what we call a notice of violation for not posting signs after they were informed.

There have been only five instances in 1½ years after we encouraged the proprietor or the smoker to work it out with the complaining public, when it has been necessary to make that final step. Again, that has been useful in the overall educational process as opposed to a major part of what it is the department does in implementing the law.

Senator STEVENS. Those were all in nonstate buildings, though, weren't they?

Mr. Ross. That is right. We did have one situation where we had to do a fairly intensive educational campaign in a court building. But as far as those that have moved, it has been in restaurants, primarily where people continue to smoke.

We worked well with citizens advocacy groups who have worked well with us. We have targeted them various buildings that they go out and work with. They, in fact, do a lot of the educational efforts, by the way, that the department would do. I think that is far more effective than having us do it.

Basically, the major difference between our legislation and yours is that we do come down on the side of no smoking. If it is necessary to make a choice as opposed to assuming that at the bottom line, there will be an accommodation.

However, I want to wholeheartedly give my support for the legislation and also to thank you for your leadership in introducing it.

The Alaskan experience has shown that this type of law can be effectively implemented without undue discomfort or expense. Even though our law is broader in scope, it has been well received by the public; it has been effective in the protection of the rights of

smokers as well as nonsmokers; and it has been implemented at minimal cost to the State in affected facilities.

I believe that the most significant benefit of the Alaska regulation as opposed to your legislation is somewhat different to quantify. But there is a much greater public awareness of the rights of nonsmokers now by proprietors as well as by smokers. Because of the attention that the law has received, smokers are now more conscious that their habits cause discomfort and aggravation to innocent parties; and children see fewer examples of a habit they should best avoid. The air in restaurants, offices, and stores is of a better quality, a cleaner environment achieved for the most part in an atmosphere of cooperation and consideration.

Senator STEVENS. Thank you. In terms of the on-going cost in your department of the State government, has there been any tremendous increase?

Mr. Ross. We are required, by law, to provide signs. That has been the only expense, really, associated with it. When the law was passed, we were given \$20,000 to basically buy the signs. We are about out of it now. So we will need a continuing influx of maybe \$5,000 a year.

We have incorporated the educational and minimal enforcement efforts into our ongoing work load. The main part of our routine, inspection of facilities for sanitation and other things, worked with the labor-management committee on the union side and basically, we really haven't had much of a burden to implement the law at all.

Senator STEVENS. In terms of the designated smoking areas in Alaska's public buildings, were there any major modifications that had to be made to those buildings?

Mr. Ross. There are none that I'm aware of. Some of the restaurants or private facilities have done some interesting things. I think they have incorporated, when they have remodeled, the concept of smoking or nonsmoking. So they have really segregated.

Also, we found people who, at their own expense, made up some beautiful smoking and no-smoking signs that made up part of the restaurants. So they didn't have cardboard signs. But other than that, there really hasn't been much of an expense.

Senator STEVENS. And the Alaska law applies in the State capitol building and the courthouse and the legislature?

Mr. Ross. That is right.

Senator STEVENS. And all public buildings of the State?

Mr. Ross. That is right.

Senator STEVENS. I thank you very much.

As a matter of fact, it was the experience we have had with that law that led me to believe there was no reason why it shouldn't apply to at least the Federal buildings operated by the Federal Government. I hope we can get some understanding as we go through these hearings that this concept works. It really has assisted the smokers, too, to have an environment without complaint.

Mr. Ross. Right. I was just up in Fairbanks where we have had a lot of activity, because that is one of our strongest citizens advocacy groups up there. Every restaurant I went to—and I stayed 3 or 4 days, and I went to several—the first thing they said was, "Smoking or nonsmoking." The decision was made then. It was very easy

to incorporate into your dining experience, and you could tell smokers were having a good time, and so were us nonsmokers.

Senator STEVENS. Thank you very much, Bill. It is good to see you here. I appreciate it.

[Mr. Ross' prepared statement follows:]

STATEMENT OF
THE HONORABLE BILL ROSS
COMMISSIONER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
S-1440, ON THE NON-SMOKERS RIGHTS ACT OF 1985

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

WASHINGTON, D.C.

SEPTEMBER 30, 1985

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INTRODUCTION

Mr. Chairman, I'm Bill Ross, Commissioner of the State of Alaska's Department of Environmental Conservation. I would like to thank you for this opportunity to testify on Senate Bill 1440, the Federal Nonmokers' Rights Act of 1985.

This Senate Bill is very similar to legislation that has become law in Alaska; therefore, I believe my testimony here today has particular relevance when considering its merits.

With all smoking legislation, there are three affected parties to be considered: smokers, nonsmokers, and the owners or operators of facilities in which smoking is to be restricted.

Persons who smoke have made a personal decision that the act of smoking outweighs the threat of cancer and other diseases. This is their privilege; and they should be allowed it, as long as their smoking does not infringe on the rights of nonsmokers.

Just as smokers have the right to smoke, nonsmokers have the right to protection from the recognized health hazards of second-hand smoke, as well as the right to work in a smoke-free environment.

The third group in the smoking matrix consists of the proprietors and employers in buildings where smokers and nonsmokers share space.

Without a legal framework, proprietors and employers are forced to make difficult decisions regarding the rights of nonsmokers versus the privilege of smokers. In addition, employers have no recourse but to accept the increased costs associated with smokers in the work place. These costs are in the form of more frequent absenteeism and higher costs for health insurance, fire insurance, life insurance, and workers' compensation. A wide body of research and public opinion has clearly identified uncontrolled smoking as both a nuisance and health hazard.

It has been suggested that the control of smoking is not a proper function of government and that nonsmokers should rely on the willingness of smokers to accommodate their needs. The State of Alaska disagrees. No one should ever have to depend upon the courtesy of others for the protection of their rights. It is the duty of government to protect individuals from dangers and nuisances caused by the actions of others.

In Alaska, the most significant areas of State effort have been in developing guidelines and educating the public. We have met

very little resistance in implementing the law. That is because our law, just as the proposed federal law, stresses "reasonable" rules and accommodations.

ALASKA LAW

Pre 1983

Alaska enacted its first smoking statutes in 1975, prohibiting smoking in all public meetings sponsored by any State agency; in public schools, libraries, museums, and swimming pools; in indoor publicly owned or operated places of entertainment or recreation; in elevators, and vehicles of public transportation; and in public areas of hospitals, nursing homes, and medical and dental offices. The statute stated that reasonable smoking areas must be provided. Businesses could elect to post "no smoking" signs and were then afforded coverage of the law. The 1975 regulations were promulgated, which made the standards of designated smoking areas more restrictive. Such designation was allowed only if the affected facility met the American Society of Heating, Refrigeration and Air Conditions Engineers' Standards (ASHRAE) (62-73) for ventilation.

One interesting feature of that initial law is that it mandated the designation of smoking areas in buildings covered by the law. In other words, smokers were almost always assured of a place to

smoke in any building they entered. Nine years later, with increased medical evidence concerning the hazards of second-hand smoke, the legislature removed that mandate.

The current Alaska law was drafted to address a finding by the Alaska Legislature that second-hand smoke is definitely a health hazard and to acknowledge increasing judicial recognition of nonsmokers' rights to work in a smoke-free environment. The amendments to the State's statute became effective on July 17, 1984.

The bill as it was initially proposed in 1983 was far broader in scope than the 1975 law, in that it prohibited smoking in all vehicles and indoor places open to the public, even those of private ownership. It also retained the statutory authority for DEC to develop regulations, specifically mandating use of the ASHRAE ventilation standards for any designated smoking areas.

Review of legislative testimony indicates that the intent of the law was to recognize the health issues associated with second-hand smoke, rather than to pursue active enforcement and require extensive physical modifications to regulated facilities. Expenses such as these would be borne not by smokers, but by the owners and operators of buildings and businesses. The Alaska Legislature did not wish to impose this economic burden on those owners and operators.

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Thus, the 1984 legislation which finally passed, represented a compromise that went further than the 1975 law, but did not go as far as the original sponsors would have taken it. Reference to any ventilation standards or to regulations was deleted, substituting instead the "reasonable accommodation" standard. Coverage of privately-owned places was eventually limited to include: grocery stores, restaurants with a seating capacity of 50 or more, schools, pre-schools and day-care centers, health care facilities, waiting or boarding areas for public transportation, and vehicles of public transportation. Coverage was expanded to include State and local government office facilities.

COMPARISON OF STATE AND FEDERAL LAW

The proposed Senate Bill 1440 would restrict smoking to designated areas in all United States' government buildings. Alaska Law includes similar coverage for State buildings.

1. Alaska's law is broader in scope than S 1440 in that it specifically prohibits smoking in areas such as schools, elevators, taxicabs, convention halls, courtrooms, jury rooms, grocery stores, and some restaurants, as well as in State buildings. The State law provides that portions of a place or vehicle may be designated as smoking areas, if "reasonable accommodations" for needs of smokers and

nonsmokers are provided, whereas S 1440 states that smoking areas shall be provided and that the "reasonable accommodations" shall be prescribed as necessary when designating smoking areas. Such a distinction appears to create a difference in the basic underlying assumption regarding nonsmoking at named places. That is, the Alaska law assumes nonsmoking is the rule and permits, but does not require, designation of smoking areas using the "reasonable accommodations" measure. S 1440 does not specify that nonsmoking is the rule but rather requires designation of smoking areas using the "reasonable accommodation" measure.

2. The State law requires posting of smoking and nonsmoking areas with signs of prescribed dimensions in appropriate areas. S 1440 makes a similar requirement for posting.
3. The State law provides civil fines for violators smoking in nonsmoking areas and for operators or "persons-in-charge" failing to post required signs. Fines range from \$10 to \$50 for smoking violations, and from \$20 to \$300 for posting violations. S 1440 provides for a civil fine of from \$50 to \$500 for violators who smoke in nonsmoking areas of buildings, but it assesses no fine for failure to post signs. This is presumably because GSA or the Committee on

Rules and Administration would be responsible for posting. Neither Alaska nor the proposed federal law has penalties for failure to provide "reasonable accommodations."

4. The State law did not provide authority to promulgate regulations governing implementation of the law. Consequently, The State Department of Environmental Conservation, which enforces the law, has developed recommended guidelines for the designation of smoking areas and the definition of "reasonable accommodations." The Senate Bill does not allow for the development of rules and regulations.

IMPLEMENTATION

In Alaska, the "Smoking in Public Places and Vehicles" law has received strong public support and has raised the level of public awareness about the consequences of second-hand smoke.

TASK FORCE

Initially, considerable controversy arose from confusion about the coverage of the law. Nonsmokers had higher expectations than the law actually addressed. Smokers were concerned that "reasonable accommodations" would not be made for them at the worksite.

A departmental task force was developed and operated for a period of 90 days. Some of the duties of that task force may be informative in highlighting areas which need consideration in order to successfully implement S 1440.

The task force was directed to:

- ° plan and coordinate public education activities;
- ° inform operators, owners, and "persons-in-charge" regarding their legal obligations and assist them in complying with the new no smoking law, including distribution of required signs;
- ° produce guidelines which interpreted the statute and provided recommendations for implementation of the new law; prepare guidelines emphasizing education; post smoking and nonsmoking areas; and present methods of complying with the intent of the law without capital outlay, for such projects as reconstruction of worksites or installation of ventilation equipment;
- ° familiarize Department staff with the new law in order to respond to inquiries and to implement provisions of the law in a uniform manner; and

- ° develop Department protocol for handling complaints responding to inquiries and processing enforcement actions.

AGENCY RESPONSE

Department Directive

Following dissolution of the task force, the Department developed a field directive outlining policy and procedures regarding implementation and enforcement of law, and addressing educational activities, the provision of information and technical assistance, the distribution of signs, the handling of complaints, and fair and consistent enforcement. As a part of the field directive, a complaint/request for assistance form was developed to document activities with regard to the smoking law.

Education Efforts

To reduce public confusion about the requirements of the new law, the Department undertook a series of educational efforts, including: press releases, newsletter, and a press conference. In addition, the Department sent a letter and copies of the guidelines and statutes to all affected facilities.

Enforcement

A unique enforcement ticket was developed (Uniform Citation), since the smoking law contains the only DEC violation which has a bailment associated with a violation fine. Close coordination with the court system was required to develop a procedure consistent with methods used by other agencies to prosecute minor offenses, such as parking violations and some fish and game violations. Basically, after a citation is issued, the violator may mail in the bailment or challenge the matter in court. To date, the program has relied on warnings for enforcement. Four cases involving \$10 fines were taken to small claims court before the current procedure was developed. A Statewide procedure was developed for issuance of a Uniform Citation, and arrangements for processing in district courts were made at each court location, accommodating any special circumstances unique to the area.

Labor Management Committee on Smoking in State Buildings

Of particular interest to you may be our experience with enforcement of the law in State buildings. This experience should closely parallel the types of problems which may be encountered at the federal level, and may provide a potential solution.

As a result of numerous complaints regarding substantial policy inconsistency between State agencies, and at least one grievance action brought through an employee union, a joint labor-management committee was formed to identify specific problems and to recommend policy and guidelines for the consistent and equitable statewide implementation of the law.

The guidelines emphasize that a cooperative effort be made to provide equitable and reasonable accommodations for smokers, as well as nonsmokers, wherever possible. Of prime consideration is the recommendation that smoking areas be designated, wherever reasonably possible and in accordance with the law. A priority order was established covering situations which create the least amount of ambient second-hand smoke to those with the highest acceptable level. Designation of entire areas as "nonsmoking" is the final option and is to be used only when no other arrangement is possible or where an employee has a medically certified condition which is aggravated by smoke.

Upper management is held accountable for implementation and enforcement of guidelines.

The committee recognized that new difficulties might arise due to changes in the work force, or as a result of implementation of the proposed policy, and therefore provided a neutral method for uniform resolution of disputes throughout the State. Disputes

which cannot be resolved at the worksite may be referred to a regional subcommittee for discussion and recommendation, and then to the statewide committee for development of a final recommendation, which would then be presented to the appropriate departmental commissioner.

SALIENT ISSUES

Fiscal Impacts

DEC was given a fiscal note for \$20,000 to implement the law. These monies were used for development, distribution, and printing of the guidelines; educational efforts; and signs. Costs of enforcing the law have been minimal. Monitoring is done during the course of regular inspections by departmental sanitarians, or in response to public complaints. First time violators are warned and are not issued a citation until a second offense. A record is kept of all warnings.

Expenses to building operators have been minimal or nonexistent. DEC has not required any structural modifications or installation of smoke-removing equipment. Some facilities have chosen to make physical modifications or install equipment but not through any direction from DEC.

The Department of Environmental Conservation's experience in enforcement of Alaska's own State law leads to some observations which may benefit you in your consideration of S 1440. First, detailed direction on the definition of "reasonable accommodations" for smokers and nonsmokers and effective patterns of designation of smoking areas would be helpful. The authority to adopt regulations provided in S 1440 should provide for this. Secondly, if program costs are a consideration, it may be desirable to amend the size of required signs to conform with a standard print size. The dimensions currently proposed are the same as those in Alaska's law and these do not result in cost-effective sign reproduction.

Another consideration in implementation of the law is the provision for sufficient personnel to monitor nonsmoking areas and to process complaints. Creation of a labor-management committee may be helpful in developing policy for the designation of smoking areas in offices and other work areas.

In conclusion, I wholeheartedly give this senate bill my unqualified endorsement. The Alaskan experience with smoking legislation has shown that this type of law can be effectively implemented without undue discomfort or expense. Even though the Alaska law is broader in scope than S 1440, it has been well received by the public; it has been effective in the protection of rights of nonsmokers and smokers; and it has been implemented

at minimal cost to the State and affected facilities. However, I believe that the most significant benefit of the Alaskan law is one which is difficult to quantify. There is a much greater public awareness of the rights of nonsmokers by smokers. Because of the attention the law has received, smokers are now more conscious that their habits causes discomfort and aggravation to innocent parties, and children see fewer examples of a habit they should best avoid. The air in restaurants, grocery stores, and offices is undoubtedly of a better quality--a cleaner environment achieved for the most part in an atmosphere of cooperation and consideration.

Senator STEVENS. Our next witness is James Repace, a physicist who is with the Environmental Protection Agency.

**TESTIMONY OF JAMES L. REPACE, M.S., PHYSICIST,
WASHINGTON, DC**

Mr. REPACE. Chairman Stevens, it is a great pleasure to be here this morning. For 22 years, I have been a scientist in government and industry, and have published 23 papers in the peer-review, scientific and technical literature. For the past 10 years, I have studied tobacco smoke as a form of indoor air pollution, and I have published 15 scientific papers on various aspects of that subject. For the past 6 years, I have also worked as a policy analyst at the Environmental Protection Agency in the air policy office.

But for the purposes of this morning's testimony, I am wearing my private citizen hat. I would like to tell you what I think is wrong with tobacco smoke in the workplace and how it can be fixed.

When science discovered that outdoor air pollution sickens and kills people, society asked Government to fix it. When science found out that indoor air pollution sickened and killed workers in the industrial workplace, society asked Government to fix that.

Now science has discovered that indoor air pollution is not confined to just the industrial workplace.

Most of us grew up in homes where someone smoked. Even when they sickened and died from inhaling that smoke, we never realized that maybe the fumes coming from the other end of the cigarettes would also affect our health. Now we know better, and at home, people often step outside to smoke.

In most workplaces, however, courtesy often takes second place to addiction. We now know that tobacco smoke is not only like factory exhaust, but that the levels of indoor tobacco smoke in the workplace are far higher than outdoor levels of factory smoke and bus exhaust. That is because typical workplace smoker densities are high, and because in most cases, the only way to clear the air is by pumping the smoke outside, using the building ventilation system.

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Unfortunately, most ventilation systems are operated primarily to conserve energy and not to preserve indoor air quality. What this means in practical terms is that in most buildings, smoke from burning cigarettes, pipes and cigars simply overwhelms the ventilation, and the three-fourths of the population that doesn't smoke gets a whopping big air pollution dose from those that do.

Unfortunately, it is a pretty bad sort of air pollution. It is capable of causing cancer. For more than 20 years, the reports of the Surgeon General, which now pile more than 1 foot high, have been telling us that the smoke that the smoker inhales, called mainstream smoke, is a cause of cancers of many organs of the body. We now know that the smoke which the nonsmoker inhales, called sidestream smoke, is even more cancer-causing than an equal amount of mainstream smoke.

Back in 1980, Lowrey and I published a paper in Science magazine in which we said that there are good reasons to suspect that nonsmokers might be at considerable risk of cancer from repeated exposure to tobacco smoke.

In 1984, the American Association for Cancer Research agreed with us. In an official position paper, they said that environmental tobacco smoke does appear to be cancer-causing, and they went on to say that because of this, Government ought to pass laws against public smoking.

In a similar vein, three smoking and health officers from Health and Welfare Canada looked at smoking in the workplace. In a 1984 medical journal paper which reviewed our work, they said that tobacco smoke is an occupational health hazard to nonsmokers.

So in the context of S. 1440, we would first like to know how big is the risk to nonsmokers in the Federal workplace from breathing their coworkers' smoke, and second, how can we fix it?

Well, to answer the question of how big is the risk, Dr. Al Lowrey and I used a powerful scientific tool called quantitative risk assessment which is often used by Federal regulatory agencies when they want to assess the risk of airborne agents suspected of causing cancer.

In 1985, after 5 hard years of work and 13 publications on the health physics of environmental tobacco smoke, we estimated that in the U.S.A., tobacco smoke probably causes from 500 to 5,000 cancer deaths per year, but more likely 5,000, with an average loss of lifespan of about 17 years per victim.

To place these figures into perspective, not only is 5,000 deaths about one-third of the lung cancer mortality of nonsmokers every year, but it is about 100 times the total estimated cancer mortality from all of the cancer-causing hazardous air pollutants that EPA currently regulates.

The tobacco industry liked our work so much that they went to considerable expense to put out a 43-page booklet to help explain our results in simple terms to the public, although I think it lost a lot in the translation. I really felt kind of sorry for them, because they had it printed on such expensive paper.

The scientific editor of the Journal of Environment International, which published our risk assessment, also liked the paper and wrote an editorial on it. He said, in essence, these results might seem controversial to some groups, and because the journal has a

reputation to protect, we put Repace and Lowrey through the scientific wringer before we let them publish.

And after explaining our results a bit more scientifically than the Tobacco Institute did in its 43-page booklet, the editor concluded, "Repace and Lowrey make a convincing case for public health hazards of public smoking."

The Journal of the American Medical Association seemed to think so too, because in its May 24, 1985 issue, it featured our results in its medical news column.

And so, after finding out that the overall cancer risk from environmental tobacco smoke is not trivial, our next order of business was to figure out how big the cancer risk was in the workplace, which we felt was the most important source of exposure, due to the high smoker densities. Somewhat to our surprise, we found that in the typical U.S. office workplace, over the range of average conditions of occupancy and ventilation, the tobacco-smoke-caused lung cancer risk to the nonsmoking office workers appears to be, depending upon the ventilation, from 250 to 1,000 times the level of acceptable risk as judged by standard Federal guidelines for cancer-causing substances in air or water or food.

Then we tried to figure out what methods would work to reduce the risk. First, we found that the separation of smokers and nonsmokers in the same room doesn't work very well.

Second, again for the case of nonsmokers and smokers in the same room, we found that nobody in his right mind would want to use ventilation and air cleaning to reduce the risk to acceptable levels, because it is too expensive.

Third, we found out if smokers and nonsmokers were put in different rooms but on the same ventilation system, that although the risk didn't disappear entirely due to recirculation of tobacco smoke, this might work reasonably well in large buildings.

Fourth, we found that if smokers and nonsmokers were put in different rooms and on different ventilation systems, the risk went away entirely.

Fifth, we looked at workplace bans on smoking. These seemed to have the most advantages on risk and cost. This is because not only does the excess risk to nonsmokers go to zero if you ban smoke, but the smokers who are motivated to quit smoking by the ban will experience a decline in their death and disability rates, which means that the cost to their employers and to society will go down.

So to sum it all up, it appears the typical nonsmoking Federal worker in a workplace where smoking is unrestricted faces a rather large lung cancer risk from environmental tobacco smoke and it also appears that there are a number of reasonable and cost-effective control measures which can provide mitigation of that risk.

I will be happy to answer any questions.

Senator STEVENS. Let me see if I can get this in perspective. What you are saying is we have got this enormous agency, EPA, and it is trying to regulate the substances that might contaminate the air in the working place. Yet of all the substances that they regulate, smoking and smoke from cigarettes would be the worst. Is that what you are saying?

Mr. REPACE. As far as the hazardous air pollutants that we now regulate in the outdoor air, the estimated cancer risk from all of those pollutants would amount to less than 50 deaths per year. They are justifiably regulated because of that. But our estimates are that the risk from smoking in the workplace would be probably 100 times that great.

Senator STEVENS. You have been studying this for well over a decade, you say?

Mr. REPACE. That is right.

Senator STEVENS. Have you had an occasion to study an area where there, in fact, has been a sensible separation between smokers and nonsmokers in a place for a period of time to see what the results have been?

Mr. REPACE. We have looked at spaces where people are not smoking and find very low levels of respirable particle air pollution. We find that there is virtually no difference between the indoor particulate air pollution and the outdoor air pollution where smoking does not occur indoors. As soon as smokers smoke inside of a building where their smoke can be trapped, then you will find particulate air pollution levels which are simply enormous, typically 10 to 100 times background.

So if you separate smokers and nonsmokers inside of a room, it will reduce the peak levels if the smokers are over in one corner, and the nonsmokers are over in the other corner. But it won't reduce the average levels, so that simply doesn't work. You have got to put them in another room which is physically separate and preferably on a separate ventilation system.

So the control measures do exist. They do work, and they are practical and cost-effective.

Senator STEVENS. Have you studied areas in the Federal Government that have had a consistent policy for a period of years of either banning smoking or limiting smoking in particular areas and compared those to other areas where there is no such ban?

Mr. REPACE. No, Senator, because we could never find any. There are very few areas in Federal Government where smoking is restricted, and those few that we found we could not test.

Senator STEVENS. The VA, I know, has a policy, but that is on the basis of each facility, as I understand it.

What about the Canadian study? Do they have any conclusions based upon actual experience and this concept of designated spaces?

Mr. REPACE. They have an even worse situation up in Canada than we do. They have a higher smoking rate. It is about 39 percent compared to our 30 percent these days. They are also having problems because they don't have any rules for separations of smokers and nonsmokers.

That was why that study was undertaken by those officials in Health and Welfare in Canada, and they did make a recommendation that measures to restrict smoking in the Canadian Federal workplace be adopted.

Senator STEVENS. This sidestream smoke, passive smoking by the nonsmokers, how do you actually study that and get the data so you can make the conclusion you have that it is even more carcino-

genic than mainstream smoke is to the person who is actually smoking the cigarette?

Mr. REPACE. That statement has been known for many years. The work done on sidestream and mainstream smoke and carcinogenicity appeared in 1967. It appears in many reports of the Surgeon General. We do know that for nonsmokers who are exposed to an equal amount of sidestream smoke that that smoke is going to be more carcinogenic than the mainstream smoke which the smokers are exposed to because it is not filtered in any way.

As to how we studied it, we carried a portable air pollution monitor around in many, many buildings, including the Federal Government workplaces. We actually physically monitored that smoke. We monitored the levels in parts of the building where people weren't smoking; we would monitor the levels outdoors.

We found in every instance where people were smoking that the concentration of tobacco smoke particles in the air was far higher than the concentration of air pollution from factory emissions and bus exhaust in the outdoor air or inside buildings where people weren't smoking.

Senator STEVENS. My concern as chairman of this subcommittee is that it is just a matter of time until we have a rash of cases against the Federal Government from nonsmokers for the failure to provide a smoke-free workplace. Even worse than that would be the problem of the dependents of a person who worked for the Federal Government, a nonsmoker, who was found to have a death caused by the sidestream smoke concept, and those dependents filing suit against the Federal Government for, in effect, wrongful death. I think there is a fantastic exposure here for the Federal Government and for all employers that ought to be assessed in view of the developments in the legal field.

Can you tell me, is there any other way to accomplish a smoke-free indoor environment, in your opinion other than a ban, as you said in the first place, or in the second place, total segregation of designated smoking areas?

Mr. REPACE. Senator, I don't believe there is. The most effective way to control indoor air pollution is by limiting the source or removing the source. Since we can't control cigarettes, per se, then you have to control the act of smoking. If it is going to occur inside of the building, the only way that you can limit the nonsmoker's exposure is to separate him from the source of that exposure, which is the act of smoking.

If you try to control smoking by ventilation, you run into the law of diminishing returns. You simply cannot jack up the ventilation rates high enough to get an acceptable lung cancer risk for nonsmokers.

If you try air cleaners, it is simply too expensive. You have to spend close to \$30,000 per smoker to get an acceptable lung cancer risk from control of tobacco smoke. So it simply isn't going to happen, except by source control.

Senator STEVENS. We thank you very much for your work and for your appearance here. I appreciate the circumstances under which you decided to come.

Senator Gore may have some questions.

Senator GORE. I just got here, Mr. Chairman. I will not delay the hearing. I would, however, like to reserve the right to pose some questions in writing.

Mr. REPACE. Certainly.

Senator GORE. Thank you.

[Mr. Repace's prepared statement, with attachments, follows:]

TESTIMONY OF JAMES L. REPACE IN THE MATTER OF SENATE BILL 1440, THE NONSMOKERS' RIGHTS ACT OF 1985. BEFORE THE U.S. SENATE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES, COMMITTEE ON GOVERNMENTAL AFFAIRS WASHINGTON, D.C. September 30, 1985

§ _____ §
MR. CHAIRMAN, AND SENATORS:

My name is James L. Repace. As a scientist who has worked for a decade on the health physics of environmental tobacco smoke, and as a policy analyst in a federal regulatory agency, I would like to share with you the risk assessment results and risk management options which I have developed in my work. My qualifications are discussed in an appendix to my statement.

STATEMENT OF JAMES L. REPACE ON THE HEALTH IMPACT OF TOBACCO COMBUSTION PRODUCTS ON NONSMOKERS

It has long been known that high levels of outdoor air pollution from factory chimneys and automobiles could cause acute illness and even death during air pollution episodes and that elevated levels of outdoor air pollution were responsible for chronic morbidity and mortality.⁶ These serious health effects from air pollution have led to federal standards for the regulation of outdoor exposure levels, and considerable progress has been made in curtailing outdoor air pollution. However, Americans spend an average of 90% of their lives indoors. Therefore the levels of indoor air pollution assume great importance in determining total human exposures to many air pollutants.^{6,14,15}

Indoor air pollution from tobacco combustion products is not only chemically related to the smoke from factory chimneys and other sources of outdoor air pollution, but generally occurs at far higher levels indoors than does factory smoke and automobile exhaust outdoors.⁶ Because one-third of the U.S. adult population

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smokes, and because ventilation rates are primarily designed to conserve energy rather than to preserve indoor air quality^{5,6,8,14,16} the smoke from burning cigarettes, pipes, and cigars overwhelms the capability of typical building ventilation systems, inflicting substantial air pollution burdens upon nonsmokers -- far in excess of those encountered in smoke-free indoor environments, outdoors, or in vehicles on busy commuter highways.^{6,8,15}

For more than 20 years, reports of the Surgeon General -- which now amount to a stack more than a foot high! -- have indicted the smoke which the smoker inhales (called mainstream smoke) as cause of cancers in many organs of the human body.^{3,5} We now know that the smoke which the nonsmoker inhales (called side-stream smoke) is even more carcinogenic than an equal amount of mainstream smoke.³ Clearly, there is good reason to believe that nonsmokers are exposed to the risk of smoking-related diseases from repeated exposure to tobacco combustion products.³

In a recent official position paper¹⁸ in which it was stated that environmental tobacco smoke appears to be carcinogenic, The American Association for Cancer Research stated that government should "enact and enforce legislation that restricts smoking in public places".

In another recent medical journal paper,¹⁷ three officials concerned with smoking and health from Canada's National Department of Health and Welfare examined the evidence that exposure to tobacco smoke in the workplace is harmful to nonsmokers. They concluded that "passive smoking is an occupational health hazard to nonsmokers".

This raises two essential questions pertinent to Senate Bill 1440: First: What are the risks to nonsmokers from breathing environmental tobacco smoke in the workplace? And secondly: What are the options for management of those risks?

To answer the risk assessment question, Dr. Alfred Lowrey, of the Naval Research Laboratory and I used the principles of quantitative risk assessment. After five years of work, and based in part on our 13 previous scientific publications on the health physics of environmental tobacco smoke, we published estimates that in the United States, exposure of nonsmokers to indoor air pollution from tobacco combustion products causes a minimum of about 500, but more likely 5000 lung cancer deaths per year, with an average loss of life-expectancy of about 17 years per victim.³ To place this into perspective, 5000 lung cancer deaths per year is nearly one-third of the annual lung cancer mortality in nonsmokers.

There have been no credible scientific attacks on our previous work, although the Tobacco Institute has publicized some failed⁸ attempts. Insofar as our published risk assessment is concerned, in an accompanying editorial, the editor-in-chief of the journal stated: "Due to the controversial nature of the paper by Repace and Lowrey, added measures were required to assure adequate peer review and the documentation of underlying information, including assumptions".¹⁹ In summary, he concluded that "... Repace and Lowrey make a convincing case for public health hazards of public smoking."¹⁹

To explore risk-management options, we assessed the risks associated with five common types of control measures for tobacco smoke. We found that in the typical U.S. office workplace, under average conditions of occupancy and ventilation, the tobacco-smoke-caused lung cancer risk to the nonsmoking office workers appears to be, depending upon the ventilation, 250 to 1000 times the level of acceptable risk using standard federal guidelines for carcinogens in air or water or food.^{2,7}

We then explored the risk reduction achievable by various control options. We found that separation of nonsmokers within a given space offers only a

slight reduction in risk.^{5,8} We found that increases in ventilation rates or air cleaning potentially offered much greater reductions in risk, but because such increases require respectively large amounts of energy and capital, they do not appear to be very cost-effective.^{2,7} We found that if smokers and nonsmokers are separated in different enclosed spaces but not on different ventilation systems, as for example in a large building, the background concentration of smoke recirculated into the nonsmokers offices via the ventilating system would probably be reduced to only a few times the acceptable risk level,^{1,2} but this option does not appear to offer the most cost-savings. Separation of smokers and nonsmokers into different spaces with different ventilation systems offers more protection than the previous option, but at a potentially higher cost. We found that a ban on smoking in the workplace appeared to offer the most cost-effective approach of all.^{1,2,20}

In summary: it appears that the typical nonsmoking federal worker in a workplace where smoking is unrestricted faces a large lung cancer risk from environmental tobacco smoke. It also appears that there are a variety of reasonable and cost-effective control measures which can provide mitigation of that risk.

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APPENDIXJ.L. REPACE: CURRICULUM VITAE:

For the past six years, I been a policy analyst in the air policy office at the U.S. Environmental Protection Agency, Washington, DC. However, my testimony here this morning will be as a private citizen, and should not be interpreted as representing official U.S. Environmental Protection Agency policy.

Prior to EPA, I worked for 16 years as a research physicist at the Naval Research Laboratory, at RCA Sarnoff Laboratory, and at two New York hospitals. I earned a Master's degree in physics from the Polytechnic Institute of Brooklyn.

I am a technical advisor to the National Academy of Sciences Committee on Passive Smoking. I am a contributor to an International Agency For Research on Cancer monograph on Sidestream Smoke, concerning modeling and measurement of nonsmokers' exposures. I am executive secretary of the Indoor Air Quality Committee of the Air Pollution Control Association. I am a member of the Interagency Technical Working Committee on Smoking, Heart, Lung and Blood Diseases. I have been a member of a National Institute of Health special study committee to review grant proposals on passive smoking and lung cancer. I have testified as an expert witness on the subject of passive smoking at a U.S. House of Representatives hearing on indoor air pollution research. I have been a consultant to both the World Health Organization and the National Academy of Sciences Committee on Airliner Cabin Air Quality on the question of passive smoking on passenger aircraft. I was a consultant on the Involuntary Smoking Chapter of the 1984 Surgeon General's Report on Smoking and Chronic Obstructive Lung Diseases. I served as a consultant to the Federal Trade Commission in the area of tobacco smoke and air cleaners. Three of my papers are cited in the 1984 Surgeon General's Report on Smoking and Lung Disease, and my work is extensively discussed in two books: "Indoor Air Quality" by B. Meyer, Addison Wesley, 1983, and in "Indoor Air Quality" by Walsh, Dudley, & Copenhaver, CRC Press, 1984.

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Passive smoking has no place in the workplace*

James L. Repace†

A recent review in *CMAJ* examined the evidence that exposure to tobacco smoke in the workplace is harmful to nonsmokers.¹ It noted that among the thousands of chemical compounds in tobacco smoke there are at least 60 known carcinogens. Some have been assigned threshold limit values (TLVs) for upper limits of safe concentration, while others are considered unsafe in any concentration.² After reviewing the reported effects of passive smoking on health, the authors concluded that passive smoking is an occupational health hazard to nonsmokers, especially workers exposed to other chemicals in the workplace.

In a recent position paper the American Association for Cancer Research (AACR)³ stated that "since there is no apparent threshold in the dose-response between the extent of smoking and the incidence of lung cancer, it is logical to inquire whether lung cancer in nonsmokers might result from smoke-filled environments". It added: "Cigarette smoke contains many complete carcinogens, direct and indirect acting tumor initiators, tumor promoters, cocarcinogens, and mutagens. Of particular concern are metabolites of nicotine itself... some of [which] are potent animal carcinogens." It further stated that "passively exposed individuals absorb cigarette smoke as indicated by significantly higher levels of urinary cotinine" and concluded that "the combined epidemiological and chemical evidence suggests that the biological effects of passive exposure are real"; accordingly, the AACR recommends that government should "enact and enforce legislation that restricts smoking in public places".

This raises the question as to what measures constitute effective restriction of smoking in the workplace and how their efficacy should be judged. For tobacco smoke the calculation of a

weighted TLV is not possible.¹ Therefore, another approach must be used. In the case of environmental carcinogens it is the usual practice in the United States to use quantitative risk assessment to determine acceptable exposure levels. In the evaluation of industrial hazards under the US federal Toxic Substance Control Act and the Clean Air Act calculation of the risk level to the exposed population is usually based on a "unit risk" derived from an exposure-response relation for the carcinogen.⁴ Such a relation has been shown for ambient tobacco smoke.⁵ The risk is then calculated for the average exposure level and is most often expressed in terms of number of cancer deaths per year. The risk to the most exposed individuals is expressed in terms of a lifetime probability of cancer-related death and is compared with a reference level of "acceptable", or "de-minimis", risk.

The level of acceptable risk varies depending on the program but is usually between 10^{-5} and 10^{-6} ; in other words, a 10^{-5} lifetime risk corresponds to a one-in-a-million chance of premature death. This method has been applied in the United States, where the number of deaths attributable to passive smoking has been estimated to be 5000 per year and the risk is about 5×10^{-5} for the most exposed individuals.⁶ In Canada, which has one tenth the US population, the estimated number of deaths attributable to passive smoking per year would be about 500, but the risk to the most exposed individuals would be the same as that in the United States.

If either the number of deaths per year or the risk to the most exposed individuals is deemed excessive, suitable technologic control measures are needed to reduce the risk to an acceptable level. Thus, with either guideline — excessive aggregate risk or excessive risk to the most exposed individuals — restrictions on public smoking are justified.

What about the workplace? In a typical workplace, where there are about seven persons per 100 m² and about one third of the workers are habitual smokers who smoke 32 cigarettes per day, the estimated carcinogenic risk to the nonsmokers would be, depending upon the ventilation, 250 to 1000 times that considered acceptable for environmental carcinogens in air, water or food.⁶ This risk cannot be reduced to an acceptable level by either ventilation or air cleaning.⁷ If smokers and non-

*The views presented are those of the author and do not necessarily reflect the policy of the US Environmental Protection Agency.

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Editorial

smokers are in different areas but those areas are served by the same ventilation system, as, for example, in a large building, the background concentration of smoke recirculating in the ventilation system might still be several times the acceptable risk level. Thus, the only practical way to reduce the risk of passive smoking to an acceptable level would be to separate the smokers and nonsmokers into areas with different ventilation systems or ban smoking in the workplace altogether.

Are such measures practical and enforceable? Group Health Cooperative, Seattle, Washington, which has 5000 employees and more than 100 000 members, phased in a ban on smoking early this year with little difficulty (Robert Rosner: personal communication, 1985). Smoking and the sale of tobacco products have been prohibited in all Indian Health Service hospitals operated by the US Public Health Service (Leland Fairbanks: personal communication, 1985). The US Environmental Protection Agency (EPA) is moving toward a consensus that smoking in the workplace should be considered an occupational health issue; accordingly, several of its regional offices have implemented stringent rules: in the Boston EPA office smoking is banned except in two restrooms; in the Philadelphia EPA office smoking is banned except in a few vending rooms (penalties for violating this rule

range from official reprimand to dismissal); and in the Seattle EPA office job announcements for the region notify applicants that smoking is prohibited. Regional officials report that their policies are working well (EPA Times 1985; 2 (14): 1). At EPA headquarters in Washington, according to a draft policy being circulated for internal review, smoking will be banned in most areas, including any offices or open spaces where employees object to others smoking in the same room.

Employers who resist efforts to protect nonsmokers from indoor air polluted by tobacco smoke may find themselves defendants in costly legal actions: a class action suit filed on behalf of 8000 IBM employees in Florida in September 1984 sought to ban smoking at all IBM offices in Palm Beach County (*The Evening Times*, West Palm Beach, Oct. 5, 1984; C2); in another recent case, filed in February 1985, the Public Service Alliance of Canada entered into binding arbitration against the Department of National Health and Welfare on behalf of a worker who objected to being exposed to the carcinogenic risks from on-the-job smoking (*The Globe and Mail*, Toronto, Feb. 22, 1985: 4).

The unquestionable facts are these: Smoking is a social disorder^a involving the inhalation of addictive toxic chemicals that ultimately cause premature death from heart disease, cancer and respiratory disease in about 50% of smokers. Nonsmokers are commonly exposed to the toxic chemicals in tobacco smoke in many workplaces. The evidence that such exposure is capable of causing disease in nonsmokers is solid and rapidly increasing. Prevention of occupational illness in workers is clearly the responsibility of employers. Passive smoking has no place in the workplace.

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Wyeth



David Slaughter, B.Sc., M.D.C.M., F.R.C.P.(C)

Dr. Karen Gilberg, Medical Director for Wyeth Ltd./Lée is pleased to announce the appointment of David Slaughter, B.Sc., M.D.C.M., F.R.C.P.(C) to the position of Associate Medical Director.

Dr. Slaughter is a graduate of McGill University with degrees in Science and Medicine specializing in Nephrology. He obtained his Fellowship in Internal Medicine in 1976. In his new position, Dr. Slaughter will be responsible for the activity of our Clinical Research programmes.

To Breathe Freely

Risk, Consent, and Air

Edited by
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Risks of Passive Smoking

James L. Repace

Introduction

Smoking of tobacco before World War I was largely a male ritual involving cigars and pipes and confined in public to saloons, smoking cars, and sporting establishments, and at home, to a separate smoking parlor.¹ World War I recruited a new generation of male smokers: the War Industries Board estimated that Allied soldiers consumed 60 to 70 percent more tobacco than in civilian life. With the advent of cigarettes (Camel Cigarettes were introduced in 1913, and Lucky Strike and Chesterfield followed in the next few years), smoking gradually became generally acceptable, and the advertising campaigns of the 1920s and 1930s aimed at women made the habit not only acceptable, but chic. By 1922, New York women were smoking openly on the streets, and in 1934, Eleanor Roosevelt smoked cigarettes publicly. The old customs were discarded, until few smokers felt the need to ask permission before lighting up and both men and women began to smoke everywhere. In the United States, the habit grew steadily from a per capita smoking rate of 1,285 in 1925 to 1,450 in 1935. Consumption among men accelerated during World War II; in 1944, more than 25 percent of U.S. cigarette production was distributed to overseas forces, typically for free or at a low cost. Women's smoking rates also accelerated during the war, as millions of women entered the labor force. Thus, by 1950, per capita consumption of cigarettes reached 3,250 and attained an historic high of 4,336 in 1963. Cigarettes came to be identified as an essential social crutch. By 1966, 52 percent of men and 34 percent of women smoked cigarettes. In the face of the widespread popularity of smoking, it became virtually impossible for the nonsmoking majority of the population to avoid exposure to tobacco smoke. The code of the smoker had become one of discourtesy: "Light up and enjoy it, and to hell with those who find it objectionable."² At public gatherings, in busi-

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ness meetings, lodge halls, and theaters, at restaurants, nightclubs, and sports events, in college classrooms, locker rooms, on buses, trains, and in aircraft, in taxis, carpools, at social gatherings, and even in most homes, smoking was taken for granted.

Smoking generally became established through social pressure and the imitation of peers or role models who smoked. Once the habit was acquired, addictive processes contributed to its maintenance: the average pack-and-a-half-a-day smoker got more than 100,000 nicotine "shots" per



"It's equal rights — I have a right to smoke and you have a right to wear a mask!"

Figure 1.1

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year—a frequency unmatched by any other form of drug taking. Smoking maintenance was characterized by steady state behavior, fueled by nicotine withdrawal, and stimulated by alcohol consumption.³ Currently, about 38 percent of men and 30 percent of women are active cigarette smokers (about one-third of adults) who consume two cigarettes per hour over a 16-hour waking day.⁴ It appears that very few smokers can satisfy their addiction on fewer than 10 to 12 cigarettes per day.⁵

Although as long ago as 1920 there had been suggestions that cigarette smoking could cause human disease, it was not until 1964 that the U.S. Surgeon General's Advisory Committee on Smoking and Health concluded: "Cigarette smoking is a health hazard of sufficient importance in the U.S. to warrant appropriate remedial action."⁶ By 1979, the scientific evidence on the health hazards of cigarette smoking was judged to be "overwhelming," with smoking judged "the largest preventable cause of death in America," causing an estimated 346,000 excess deaths per year from lung cancer and other cancers, cardiovascular disease, and chronic pulmonary disease.⁷

Effects of Tobacco Smoke on Nonsmokers

Our concern in this paper is not with the effects of tobacco smoke on those who do the smoking. These, as indicated above, are well known and need no further discussion. Furthermore, since those who suffer the direct ill effects of smoking presumably also derive real or imagined benefits from smoking, and since they voluntarily choose to smoke, questions of wrongful risk imposition do not arise.

But recently harmful effects of smoking on nonsmokers have received considerable attention. Since these risks are by and large not voluntarily assumed and do not bring with them corresponding benefits, moral questions arise in a more interesting way. These harmful effects can be discussed in two categories: acute effects and chronic effects.

Acute Effects of Tobacco Smoke on Nonsmokers

Although the smoking habit may provide pleasure to its practitioners, many nonsmokers find that the acrid fumes of tobacco smoke cling to their hair and clothes and interfere with their enjoyment of food. In addition, many nonsmokers experience irritating effects from tobacco smoke, particularly those who have never smoked. The latter group currently comprises about 44 percent of the population (all ages). In 1979, about 80 percent of these "never smokers" (an estimated 77 million persons) reported that it was "annoying to be near a person who is smoking ciga-

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rettes." By contrast, only 5 percent of smokers found others' smoke to be objectionable.⁹

"Annoyance" from tobacco smoke takes many unpleasant forms, ranging from reaction to bad odors to serious eye, nose, and throat irritations. Nonsmokers differ in their sensitivity to tobacco smoke, with those who suffer from allergic disease (about 10 percent of the population⁹) being most likely to exhibit acute debilitating sensitivity. Speer, using a measure of nine indices of sensitivity to tobacco smoke, found that allergic nonsmokers reacted on the whole two-and-one-half times as frequently as nonallergic nonsmokers.¹⁰ Sensitivity to tobacco smoke may produce such symptoms as itching, tearing, burning, or swelling of the eyes; sneezing, or blocking, running, itching, or dryness of the nasal airways; headache, coughing, wheezing, sore throat, hoarseness, nausea, or dizziness. Hypersensitive nonsmokers reported particular increases in the frequency of nose and throat irritation, and in wheezing, relative to nonallergic nonsmokers. Ten percent of the 44 percent of the population who never smoked might be expected to be allergic and therefore potentially hypersensitive to tobacco smoke. In fact, a Gallup Poll taken in 1978 reported that about 4 percent of nonsmoking respondents professed "allergy" to tobacco smoke.¹¹ Thus, an estimated 4 percent of the nonsmoking population (about 3 percent of the total population or about one out of every 33 persons) appears to be hypersensitive to ambient tobacco smoke. A recent study by Dahms et al. compared ten patients with bronchial asthma to ten normal controls under passive smoking conditions well within the range commonly reported for taverns and nightclubs; after one hour of smoke exposure, three major indices of pulmonary function had (reversibly) decreased by an average of 20 percent.¹² Dahms et al. concluded that bronchial asthmatics (about 4 percent of the population, interestingly¹³) are at risk from ambient tobacco smoke.

Savel, in a study of eight nonsmokers with acute hypersensitivity to tobacco smoke, found a sixfold enhancement of acute lymphocyte stimulation, moderate to intense upper respiratory discomfort, headaches in 50 percent of the group, with symptoms beginning typically within 30 minutes to one hour of onset of exposure and persisting for at least 8 to 12 hours.¹⁴ Aronow found that passive smoking by ten patients with angina produced dynamic changes in blood pressure and decreased time to onset of anginal attack by 22 percent and 38 percent respectively under conditions of good and poor ventilation.¹⁵ Thus, the toxic effects of ambient tobacco smoke on those with preexisting disease states are manifest. Its effects on healthy normals, however, have only begun to be studied.

Chronic Effects of Tobacco Smoke on Nonsmokers

It has long been known that high levels of smoke from factory chimneys could cause illness and death during air pollution episodes and that ele-

vated levels of smoke were epidemiologically implicated in chronic respiratory morbidity. For this reason, laws such as the Clean Air Act were passed in order to protect human health from the effects of outdoor air pollution, and National Ambient Air Quality Standards (NAAQS) were established. In the establishment of such standards it was explicitly assumed that air contaminants external to buildings was the only concern, and that if this could be cleaned up, public health would be protected from the ravages of air pollution.

It fell to a physicist and a chemist at the Naval Research Laboratory in Washington, D.C., to demonstrate, in an after-hours research project, what the air pollution establishment would not or could not see: that the smoke pollution inhaled indirectly from cigarettes, pipes, and cigars indoors was not only chemically related to the smoke from factory chimneys, but routinely occurred at far higher levels indoors than did factory smoke or automobile exhaust outdoors.¹⁶ The Naval researchers' controlled experiments and field studies showed that in buildings where tobacco is smoked, substantial air pollution burdens were inflicted upon nonsmokers, far in excess of those encountered in smoke-free indoor environments, outdoors, or in vehicles on busy commuter highways. Daily exposure to ambient tobacco smoke, they found, could cause air pollution levels corresponding to violation of the annual National Ambient Air Quality Standard for Total Suspended Particulates for exposed office workers, at typical building occupancies and ventilation rates, and amounted to the single most important source of exposure of the population to this harmful kind of air pollution.

Furthermore, based on modeled absorbed doses, there was good reason to believe that nonsmokers might be exposed to the risk of smokers' diseases from routinely breathing indoor air pollution from tobacco smoke.¹⁷ In fact, as this heretical research was going to press, a physiologist and a physician at the University of California in San Diego published a paper in the *New England Journal of Medicine* which made coast-to-coast headlines: after ten years of research on more than 2,000 persons, they had concluded that long-term exposure to indoor tobacco smoke in the workplace was deleterious to the healthy normal nonsmoker and significantly reduced small airways function to the same extent as smoking one to ten cigarettes per day!¹⁸ The *New York Times* editorialized in a piece entitled "Thy Neighbor's Lungs," "That is not yet proof that the reduced lung function in an otherwise healthy body is medically important. Most victims were probably unaware of the impairment. But deterioration of the small airways in the lung does often precede lung disease. It is another reason, on top of earlier reasons, to prohibit smoking in indoor public places unless the smokers can be segregated so that they cannot jeopardize their neighbors."¹⁹

Nearly a year later, the chief epidemiologist of the National Cancer Center Research Institute in Tokyo, Dr. Takeshi Hirayama, published an

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electrifying study of lung cancer mortality in 142,857 women which reported that nonsmoking women with smoking husbands developed lung cancer at a rate nearly double that of women whose husbands did not smoke.²⁰ The findings received worldwide attention. Sir Richard Doll, an internationally prominent British epidemiologist, commented that Hirayama's study was scientifically sound; the implication, he said, is that cigarette smoking poses "a hazard to anybody in public rooms if they are not well ventilated."²¹ Four days later, the *New York Times*, in a piece entitled "Smoking Your Wife to Death," would editorialize, "So much for the notion that second-hand smoke is merely a nuisance. The Japanese study, published in the authoritative *British Medical Journal*, adds to the growing evidence that second-hand smoke kills. The results strengthen the case for banning smoking in public places, especially where abstainers are exposed to smoke for long periods."²² The Tobacco Institute initially refused comment, pleading that they had not seen the study. But behind the scenes, they retained the nationally prominent statistician Dr. Nathan Mantel to find flaws in Hirayama's methods. In a memo to the Tobacco Institute, Mantel speculated that Hirayama had possibly made an error in a standard test of statistical significance; the Tobacco Institute widely publicized this speculation, but Mantel, in an interview, denied reaching a conclusion.²³ A voluminous correspondence attacking and defending Hirayama filled the letters column of the *British Medical Journal*. The Journal went to unusual lengths to air the controversy, even publishing a letter from the Tobacco Institute.²⁴

Meanwhile, two new papers added further fuel to the controversy. Appearing almost simultaneously with the Japanese work was a small and little-publicized but well-crafted study of a few hundred Greek women by Trichopoulos et al.²⁵ Like Hirayama, the authors also found that the nonsmoking wives of smoking husbands suffered lung cancer at approximately double the rate as their counterparts with nonsmoking husbands. However, five months later, Lawrence Garfinkel of the American Cancer Society published a paper in the *Journal of the National Cancer Institute* which examined lung cancer in 176,739 nonsmoking women as a function of their husbands' smoking habits.²⁶ Although a small positive result was obtained, it did not attain statistical significance, and no dose-response relationship was observed. Garfinkel concluded that any effect of passive smoking on lung cancer was very small. His analysis did not attempt to control for confounding variables, however, and the study was not originally designed to detect an effect of passive smoking.²⁷ Nevertheless, the Tobacco Institute widely trumpeted the study as a refutation of Hirayama's work, and the *Medical World News* carried the headline, "On Passive Smoking: Cancer Society and Tobacco Institute in Rare Unity."²⁸ The U.S. Surgeon General, after weighing the rival studies, concluded:

"In recent months, the popular press has generated interest in the controversy of whether passive or involuntary smoking causes lung cancer in nonsmokers. Three epidemiological studies examined this issue in the past year. . . . While the nature of this association is unresolved, it does raise the concern that involuntary smoking may pose a carcinogenic risk to the nonsmoker. . . . Therefore, for the purpose of preventive medicine, prudence dictates that nonsmokers avoid exposure to second-hand tobacco smoke to the extent possible."²⁹ Dr. Nicholas J. Wald, a noted Oxford University cancer epidemiologist, went even further, stating that reports that the Cancer Society study contradicted the other two were "absolute rubbish." He warned that "BOPS—breathing other people's smoke—may bring early death to as many as 2,000 nonsmoking Americans every year."³⁰

Thus, the issue is drawn: there is now evidence, some of it disputed, that ambient tobacco smoke, like ambient factory emissions, increases the risk of cancer and respiratory disease.

Obstacles to Risk-Aversive Action

In the next section I consider different strategies for regulating and controlling the risks posed by passive cigarette smoking. But several factors conspire to make resolution of this problem difficult.

First, those suffering the acute debilitating effects of passive smoking, as the statistics cited above indicate, are a small minority. Since hypersensitives make up only an estimated 3 percent of the general population, this means that in many social and professional situations the hypersensitive nonsmoker is vastly outnumbered by both smokers and moderately sensitive nonsmokers.

This group of hypersensitives is pitted, furthermore, against a powerful adversary in the form of the cigarette industry. The cigarette industry is a relatively small but highly profitable industry of six companies, 39,000 employees, and 14 manufacturing plants. Total consumer expenditures in 1981 were \$15.8 billion, of which \$6 billion went for taxes. The advertising budget of the industry was about \$800 million. The penetration of the industry into the print advertising market accounted for 10 percent of magazine advertising dollars, 14 percent of product advertising in newspapers, 31 percent of all outdoor advertising, and 52 percent of all dollars spent in newspaper supplements. With this massive advertising budget comes influence: replacement of the loss of this large revenue would be difficult for any of these media.³¹ In fact, with the exception of a few publications (e.g., *Good Housekeeping*, *Reader's Digest*, *The New Yorker*), mass-market magazines generally run extensive advertising for cigarettes, and in the case of major women's magazines, a study has indicated that ade-

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quate editorial coverage is not provided on the risks of cigarette smoking; i.e., the economic impact of advertising could be dictating the editorial policies of some magazines.³² Moreover, public service information on smoking provided by the TV networks is "virtually invisible."³³

The tobacco industry is well served by its ardent lobby, the Tobacco Institute, an industry trade association which serves as the propaganda arm of tobacco interests. The stated goal of the Tobacco Institute is

to preserve the ability of business to enter into the free marketplace, . . . to create a climate in which our member companies can compete without unwarranted restraints. This means that we assist the nation's news media, its public policy setters, and the public itself in separating fact from fiction concerning smoking and health. It means pointing out the gaps in scientific knowledge as well as . . . overstatements of what is known. It means emphasizing the danger of accepting fallacy for fact in any scientific dispute before all information is available.³⁴

These goals are furthered by the Institute's three professional speakers, its movie shorts, and its publications, which include its house organ, *The Tobacco Observer*. Through these, the Tobacco Institute has launched a major propaganda campaign, using a "freedom of choice" theme, to cast nonsmokers' rights advocates as "fumaphobes" who have an extreme and irrational fear of tobacco smoke. They hope in this way to persuade the silent majority of nonsmokers to dissociate themselves from the movement.³⁵

As an indication of the mendacious nature of this campaign, consider the following principles gleaned from a recent issue of *The Tobacco Observer*.³⁶ With respect to smoking:

Business has an unrestrained right to market products.

Smokers have a right to personal choice in the matter of social custom, free of regulation.

The relationship between smoking and disease cannot be proved until all information is available.

(Business, of course, does not have the unrestrained right to market harmful products; regulation of tobacco products under every conceivable federal law is specifically proscribed, however, due to the efforts of the tobacco lobby.³⁷ Although smokers have enjoyed the right to consume tobacco, other dangerous drugs are strictly regulated by society. Thousands of research reports now incriminate tobacco smoke as a cause of disease.) With respect to smoking restrictions:

Antismoking groups are prohibitionists who wish to criminalize the act of smoking in public.

Smoking restrictions are costly to business and unenforceable. Freedom is the right to choose, including the right to make choices others disapprove.

(In fact, few nonsmokers' rights advocates propose prohibition of tobacco products; most seek only restrictions on smoking. Smoking restrictions in fact work extremely well wherever they are tried, e.g., on transport aircraft, where 70 percent of passengers choose nonsmoking sections. Freedom to make choices of which others disapprove does not extend to harming their health.) With respect to environmental tobacco smoke:

Present studies of the effects of ambient tobacco smoke are inconclusive; more research is needed.

Tobacco smoke is not a major source of workplace pollution; dust and "exhaust" are much greater.

There is no proof that smoking in public affects persons with respiratory disease.

Tobacco smoke has been shown to be a minor annoyance at most.

Smoking restrictions cannot be justified on the basis of minor annoyance.

The whole issue can be dealt with by mutual courtesy.

(The failure of courtesy, inherent in the addictive nature of the smoking habit, is the source of the problem; most air pollutants are regulated on the basis of far weaker evidence than exists against ambient tobacco smoke; that smoking in public does not affect persons with respiratory disease is contradicted by many studies.³⁹)

Thus nonsmokers have to contend not only with opposition on a personal level from irate smokers who resent interference with their addiction, but with institutional opposition from the industry. As we shall see in what follows, this opposition has been instrumental in limiting the relief available to nonsmokers whose rights have been violated. Nonsmokers have been fighting back, however. Around 1970, two antismoking organizations were formed by nonsmokers who suffered acute effects from tobacco smoke: ASH, Action on Smoking and Health, and GASP, Group Against Smokers' Pollution. ASH, a legal action group, has been successful in bringing actions which resulted in "equal time" for public-interest and antismoking commercials on television, and in persuading the Civil Aeronautics Board to establish nonsmoking sections on aircraft. GASP, more of a grass-roots citizens' organization with chapters in many states, has been effective in lobbying for smoking-restrictive legislation. Both ASH and GASP exert pressure on governments and private busi-

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nesses to restrict smoking, bring lawsuits on behalf of individual nonsmokers, educate the public on nonsmokers' rights, publish lists of business establishments restricting smoking, and distribute buttons, business cards, signs, and bumper stickers with antismoking slogans.³⁹ The major voluntary health organizations in the past have been criticized for their inaction on nonsmokers' rights, but recently the American Lung Association has taken an aggressive stance. These passive smoking risk-evaluating organizations, however, do not have the financial resources of the Tobacco Institute. The federal government maintains an Office on Smoking and Health, but severe budget cuts have limited its ability to counter the propaganda of the Tobacco Institute.⁴⁰ Nevertheless, there is evidence that the tobacco industry has much to fear from nonsmokers' rights groups: A Roper Poll taken for the industry in 1978 reported that the finding that nearly 60 percent of the population believes that smoking is dangerous to nonsmokers' health is "the most dangerous development affecting the viability of the tobacco industry that has yet occurred."⁴¹

Strategies for Approaching the Problem

In this section I survey different approaches to resolve the problem of the risks posed to nonsmokers by side-stream cigarette smoke. It is interesting that the control methods most widely suggested have not been aimed at the source of the problem—the cigarette—but at strategies for modifying relevant human behavior: through banning or restricting smoking in public places or directing nonsmokers to avoid smoky places. I consider in turn a) regulation of cigarettes; b) smoking restriction laws; c) remedies provided by the legal system; and d) attempts to regulate cigarette smoke as air pollution.

Regulation of Cigarettes

An attractive option to controlling side-stream smoke from cigarettes would be to require the marketing of cigarettes which had lower emissions, for example a self-extinguishing cigarette. However, regulation of tobacco products is specifically proscribed under the Federal Hazardous Substances Act, the Consumer Product Safety Act, the Fair Packaging and Labeling Act, the Controlled Substance Act, and the Toxic Substance Control Act. Under a recent federal court ruling, tobacco products may not be regulated under the Food, Drug, and Cosmetics Act—even though nontobacco cigarettes may be. Because federal law is preemptive, states may not regulate tobacco products. Although the Congress has imposed a federal tax on cigarettes, currently 16 cents per pack, it returns some of this revenue in the form of tobacco-growing subsidies to farmers. As a re-

sult of the Surgeon General's Report on Smoking and Health of 1964. Congress has required a health warning to be placed on all cigarette packages sold in the United States and on all cigarette advertising, and the tobacco industry voluntarily withdrew TV advertising after it lost a legal battle which required TV outlets to air "equal-time" antismoking messages. Thus, although some small progress has been made, regulation of cigarettes appears to be very difficult, a testimonial to the power of the tobacco lobby.

Legislation Restricting Smoking

A second approach is to pass legislation restricting smoking in specified areas. Swingle has reviewed such legislation: as of 1980, 34 states have legislation which restricts smoking in some fashion, and one state has accomplished this administratively.⁴² All of these statutes have been enacted only since 1974 and affect one or more of the following locations: restaurants, retail stores, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, offices, and meeting rooms. Twenty-five states can be described as having reasonably comprehensive laws. Seven states and the District of Columbia have very weak laws, affecting typically only such places as buses and elevators. Thirteen states have laws prohibiting smoking in schools and other areas because of fire hazards or food contamination. Three states—Alabama, North Carolina, and Wisconsin—have no laws restricting smoking. Among the stronger laws are those which declare smoking to be a health hazard or public nuisance; a few even state that their intent is to protect the right of the non-smoker to breathe clean air. Only four states—Minnesota, Montana, Nebraska, and Utah—have statutes regulating smoking in the workplace. The Minnesota statute is representative; it provides that it is the employer's responsibility to provide a smoke-free area at the employee's request and even holds out the possibility of injunctive relief for victims of repeated violations; violation of the statute is ordinarily treated as a petty misdemeanor. In most states, however, workers suffering from smoking on the job have had only the unattractive alternatives of continuing to suffer, quitting their jobs, taking a disability retirement, or taking legal action.

Strong statewide laws such as Minnesota's are extraordinarily difficult to pass as evidenced by their rarity and by the following record of failed attempts. In 1979, 38 states introduced 116 bills to limit or extend restrictions against smoking in various public places. Seven were passed by seven states. In 1980, only one out of 49 such bills passed, generally due to the determined opposition of the tobacco lobby.⁴³ The author has been present at legislative hearings in eight jurisdictions in the metropolitan

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Washington, D.C., area; in each instance, one or more representatives of the tobacco industry were present and argued against the bill (nonsmokers' rights advocates in several states confirm that this is a usual phenomenon). In four of the eight cases (where there was a large public turnout) most of the legislation was passed, but often only after several tries. However, it is comparatively much easier to pass legislation on a county level, as evidenced by the stunning series of 30 successes achieved in California recently.

Remedies Through the Legal System

Secondhand smoke in the workplace has provoked a number of important lawsuits through which afflicted nonsmoking workers have sought relief from an intolerable work situation. The first three suits involve federal employees, who generally have different legal rights from private business employees.

(1) Labor-management strife at the Social Security Administration in Baltimore led to a study by Barad of 10,000 nonsmoking federal workers.⁴⁴ Barad found that ambient tobacco smoke impaired the working efficiency of more than 50 percent of the nonsmokers to some extent, with 36 percent reporting that they were forced to move away from their work stations to avoid breathing smoke. Twenty percent of the nonsmokers reported difficulty in concentrating on work due to passive smoking, and 14 percent found it difficult to produce work as a result of smoke on the job. Nearly 25 percent of the nonsmokers expressed feelings of frustration and hostility toward smokers and management. Ten out of these 10,000 employees ultimately formed an organization called the "Social Security Administration Ecology Group Committee on Tobacco Smoke and Its Hazardous Effects on Employee Health." Allied with two nonprofit nonsmokers' rights organizations (GASP and ASH), 17 other federal workers, and a group called FENSR (Federal Employees for Nonsmokers' Rights), they brought suit against the federal government in the District of Columbia Circuit Court on June 17, 1977, because of inability to obtain relief through normal administrative channels. It is instructive to inquire into the details.

According to Barad, a full 10 percent of the employees reported "allergy" to tobacco smoke, and an additional 3 percent reported aggravation of a cardiovascular disorder. If just the allergics are considered, this amounts to about 4.5 percent of the work force, in fair agreement with our earlier estimate of about 3 percent of the general population being hypersensitive to tobacco smoke.⁴⁵ In the case of the Social Security Administration, the hypersensitive group was outnumbered by about seven to one by the smokers (31 percent of employees) and by 15 to one by both

smokers and nonsmokers who did not have any problem with ambient tobacco smoke. Moreover, Barad reports that 41 percent of the supervisors smoked, further complicating the problem for the hypersensitives in the rank-and-file. In fact, 52 percent of those nonsmokers who tried informally to get smoking coworkers to refrain from smoking in the office were generally unsuccessful, and another 34 percent got mixed results. When polled, 55 percent of the smokers rejected special designated smoking areas away from the workstation, rejected separation of smokers and nonsmokers into different work areas, and rejected a total prohibition of smoking at work (the latter was favored by 33 percent of the nonsmokers).

Having exhausted their administrative remedies, the bitterly frustrated core of hypersensitives went to court, asserting that the federal government had a common-law duty to protect the health of its employees. Nearly two years later, U.S. District Court Judge Charles R. Richey dismissed the case with prejudice, stating that health protection of employees was not appropriately a part of the common law, and that the Court therefore lacked jurisdiction.⁴⁶ This dismissal was upheld by the Court of Appeals and ultimately by the Supreme Court itself in its October 1979 term. Thus, these public employees were told in effect that their right to enjoy a smoke-free workplace was not legally guaranteed (Figure 1.2).

(2) This principle was enunciated more clearly in September 1982, when Trial Judge Donald Voorhees ruled that Lanny Vickers, a purchasing agent for the Veterans' Administration Hospital in Seattle, who developed headaches and severe eye, nose, and throat symptoms from exposure to ambient tobacco smoke, was a handicapped person under the Federal Rehabilitation Act of 1973. The judge further ruled, however, that the Veterans' Administration could not be forced to provide him with a smoke-free working environment. According to Judge Voorhees, who said he had never smoked, smokers in a workplace "have certain rights" which must be balanced against Vickers's desires. "Until and unless Congress enacts a statute banning the smoking of tobacco in Government offices or the Veterans' Administration promulgates a policy against smoking in its offices," the judge asserted, "the desires of those employees who wish to smoke cannot be disregarded." The judge said that it was Vickers's responsibility to avoid tobacco smoke. The Labor Department, however, has awarded Vickers compensation for the time he misses from work because of the ill effects of tobacco smoke.⁴⁷

(3) On the heels of the Vickers case, in October 1982, the 9th U.S. Circuit Court of Appeals in San Francisco extended Judge Voorhees's doctrine in a direction more favorable to nonsmokers. Irene Parodi, a procurement clerk with the Defense Logistics Agency, became ill several years earlier after being moved to an office with many heavy smokers.

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After unsuccessfully trying to get a transfer away, she appealed for a disability retirement on the grounds that she could not work around smokers. The Office of Personnel Management turned her down on the grounds that her condition did not meet the government's definition of disability; the decision was reaffirmed by the Merit Systems Promotion Board. Parodi then took her case to court. The Appeals Court ruled that the Defense Department either must find and offer Parodi "suitable employment in a safe environment," or it would order the government to retire her on disability.⁴⁸ On August 1, 1984, a stipulated settlement was reached where Parodi was awarded a lump-sum payment of \$50,000 and a monthly disability payment, with the judge ruling that the government had failed to provide a safe locale. This decision, while helpful to hypersensitive nonsmokers on the federal payroll, falls far short of providing sufficient protection to nonsmokers, since a finding of disability does not require accommodation, while a finding of "handicapped" would have required the government to provide relief on the job.

What of the situation for private sector employees? It might be expected that bringing a legal action against a private employer would be considered legitimate grounds for dismissal—a problem not faced by the federal workers. Let us consider three cases brought against private employers which illustrate the private workplace problem.

(1) Donna Shimp, an employee of New Jersey Bell Telephone Company for nine years, was transferred to a small unventilated office containing seven smokers out of 13 workers where, in her own words, she felt like "a piece of meat thrust into a smoke-house for curing." She developed erosion of the cornea, skin rashes, vomiting, and headaches. On her physician's advice, she remained home for three months on disability. Upon her return to work, a company physician advised that she return only to a smoke-free environment. A company executive told her that such an environment could not be provided in the department where she worked, and that neither the company nor the union would consider a change in policy. She was told that her alternatives were to continue to work in an environment that was damaging her health, to be transferred with a demotion and salary cut to a nonsmoking area designed to protect sensitive switching equipment, or to be fired to protect her health. She appealed this decision and exhausted her administrative remedies with both the company and the union, seeking to restrict smoking or to provide increased ventilation. She then appealed for assistance to the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Labor Relations Board, with a similar lack of success. Frustrated, she turned to the courts. A law school professor agreed to represent her without fee. Two years later, in 1977, the New Jersey Superior Court enjoined New Jersey Bell to restrict Shimp's

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Figure 1.2

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coworkers' smoking to a nonwork area.⁴⁹ The suit was based on the legal theory that it is an employer's duty to provide safe working conditions. The case never went beyond trial court, however, and is therefore considered less than definitive.⁵⁰ Plaintiffs in two more-recent cases have not fared as well.

(2) Paul Smith, an employee of Western Electric in St. Louis, had tried in vain for five years to convince his superiors that working in a smoke-filled room with 30 smokers was responsible for his headaches, high blood pressure, nausea, chest pains, and a litany of other medical complaints.⁵¹ Finally, three weeks of tests in a specialized clinic produced medical evidence of his intolerance to ambient tobacco smoke. The company, convinced of his medical problem, gave Smith the enforced alternatives of either wearing a respirator on the job (so that the company could avoid liability), or accepting a transfer to a smoke-free computer area—at a \$500 per month pay cut. In October 1980, after wearing the bulky, noisy respirator for several months, Smith filed suit against the company, demanding that smoking be barred in all but designated areas of his office.⁵² Circuit Court Judge Phillip J. Sweeney threw out the case, asserting that Smith did not have a remedy under Missouri law. He appealed this decision, and in September 1982, the Missouri Appellate Court, in a precedent-setting opinion, remanded the case back to the trial court, asserting that Missouri common law does require an employer to provide a reasonably safe workplace, and that the plaintiff is not only entitled to a trial on the merits, but if his case is proved, is entitled to relief.⁵³ Win or lose, however, this case will cost Smith several thousand dollars in legal fees. At this writing, Smith is, on advice of his physician, on an extended sick leave and in August 1984 completed his second trial.

(3) Adele Gordan, an employee of Raven Systems and Research, Inc., a contract research firm in Washington, D.C., arranged with her supervisor to be seated in a smoke-free area upon joining the firm. After a time, her supervisor ordered her to move into an area contaminated by smoke. Gordan refused, explaining that upon exposure to smoke, her eyes watered, she coughed, and her nose became stuffy, red, and swollen. Her boss allegedly replied "the work comes before your health." She persisted, was fired, and filed suit in D.C. Superior Court.⁵⁴ After several days of hearings before a jury, the trial judge threw out the case, asserting that the plaintiff had no remedy under D.C. law. The D.C. Court of Appeals ruled in May 1983 to uphold the lower court ruling, stating that companies in the District of Columbia do not have to provide special accommodations for nonsmoking employees who wish a smoke-free working environment, and that it is up to the D.C. City Council to make laws protecting smokers. (The Council has considered such a law, but it failed to pass).⁵⁵ Gordan, like Shimp, has fortunately received the benefit of pro bono legal assistance. Unlike Shimp, she has lost her job.

Thus, with the single exception of the Shimp case, trial courts have appeared quite reluctant to impose a judicial solution to the problem of the acute effects of indoor air pollution from tobacco smoke, preferring to leave the problem to the legislative arena. This may be due to the relatively small percentage of the population exhibiting hypersensitivity to tobacco smoke, the widespread social acceptance of the custom of smoking, and the almost total lack of federal regulation of the product. However, the recent precedent-setting appellate decision in *Smith v. Western Electric* may encourage future nonsmokers' litigation, especially if Smith is able to prove his case.

Tobacco Smoke as Hazardous Air Pollution

Section 112 of the Clean Air Act calls for regulation of pollutants which may "reasonably be anticipated to result in an increase in mortality or an increase in incapacitating reversible illness." Airborne carcinogens are given a high priority for listing as hazardous air pollutants. Nowhere in the act is it specified that the pollutant must be an outdoor one; this is simply an historical interpretation of its mandate by the Environmental Protection Agency (EPA).

The provisional policies developed by the EPA for identifying, assessing, and regulating airborne substances which may pose a risk of cancer require two basic questions to be answered: What is the probability that the substance is a human carcinogen? What is the extent of human exposure?⁵⁴ In response to the first question, the U.S. Surgeon General has said: "Cigarette smoking is the major single cause of cancers of the lung, larynx, oral cavity, and esophagus, and is a contributory factor for the development of cancers of the bladder, pancreas, and kidney. The term contributory factor by no means excludes the possibility of a causal role for cancers of these sites."⁵⁷ As far as the extent of nonsmokers' exposure, as we have discussed, the pandemic nature of smoking makes it quite difficult for a nonsmoker to avoid exposure, from childhood onward. In 1970, a national survey indicated that nearly two-thirds of U.S. children resided in homes where at least one person smoked.⁵⁸ For adults, smoking does not appear to be prohibited in more than about 11 percent of white-collar and 28 percent of blue-collar U.S. workplaces.⁵⁹ Tobacco smoke persists in indoor spaces long after an individual cigarette is extinguished: at a typical ventilation rate of one air change per hour, it takes about three hours for 95 percent of the smoke to dissipate; at the average smoking rate of two cigarettes per hour per smoker, there is always residual smoke in a room. Since the average person spends more than 90 percent of the day indoors, and since one out of three adults smokes, many nonsmokers spend significant fractions of the day in an atmosphere contaminated by tobacco smoke.⁶⁰ Thus, ambient tobacco smoke

might be considered a prime candidate for listing as a hazardous air pollutant under the Clean Air Act, based solely on the criteria of carcinogenicity and exposure.

Once a hazardous air pollutant has been identified as an airborne carcinogen, the regulatory process calls for the listed pollutant to undergo quantitative risk assessment. While cancer risk estimation is an imprecise endeavor involving many uncertainties, such estimation can often provide a rough measure of the magnitude of the carcinogenic risk of the substance.⁶¹

A rough estimate of the order of magnitude of the effect of passive smoking can be obtained from Hirayama's 1981 study.⁶² Hirayama found that the average effect of passive smoking on nonsmoking Japanese women whose husbands smoked was to increase their lung cancer death rate by about eight cases per 100,000 population per year in the population age group at risk of lung cancer (≥ 40 years). Repace and Lowrey have estimated a similar rate in the U.S. population at risk.⁶³ How does such a risk compare to other risks faced by the U.S. population? Lichtenstein et al. have given a table of statistical estimates of the frequency of death per 100 million persons in the U.S. as an average over the years 1968 to 1973, shown in Table 1.1.⁶⁴ Added for comparison is the eight per 100,000 risk scaled to the U.S. population in 1970. The estimated annual risk is 3,700 lung cancer deaths from passive smoking per 10⁶ U.S. residents. (This average is taken over *all* age groups, not just those at risk of lung cancer, to be compatible with the numbers presented in the rest of the table.) 1978 data is added for smokers taken as a group. It can be seen that this estimated risk is considerably in excess of many other involuntary risks and appears to be far from trivial.

Is the level of risk from passive smoking acceptable? Some risks are considered "acceptable" by society because they are purely personal and voluntary, and by some individuals because they derive some benefit, real or imagined. Examples in this category might include the risk of premature death from heart disease by being grossly overweight, or from accidental falls during mountain climbing. Some risks are considered acceptable because they are beyond the ability of society or individuals to control, such as earthquakes. Other risks are considered unacceptable by society because the risk to society is acute. An example would be experiments involving implantation of human enteral bacteria with the genes for the production of botulinus toxin. In between fall a large number of risks whose magnitude is reduced by risk-averse action: society maintains fire and police forces; individuals wear seat belts in autos and avoid air transportation or military service. If society or individuals "consent" to a risk, they have judged it acceptable. If they do not consent to a risk, they have judged it unacceptable and may, as far as possible, take risk-

Table 1.1 Comparison of Estimated Lung Cancer Mortality from Passive Smoking with Statistical Estimates of the Frequency of Death per 10⁵ Residents per Year, 1968-1973 Average

Cause	Rate/10 ⁵
Smallpox	0
Poisoning by vitamins	0.5
Botulism	1
Measles	2.4
Fireworks	3
Smallpox vaccination	4
Whooping cough	7.2
Polio	8.3
Venomous bite or sting	23.5
Tornado	44
Lightning	52
Nonvenomous animal	63
Flood	100
Commercial air crashes	100
Excess cold	163
Syphilis	200
Pregnancy, childbirth, and abortion	220
Infectious hepatitis	330
Appendicitis	440
Electrocution	550
Motor vehicle-train collision	740
Asthma	920
Firearm accident	1,100
Poisoning by solid or liquid	1,250
Tuberculosis	1,800
Fire and flames	3,600
Drowning	3,600
Passive smoking (average) ^a	3,700
Leukemia	7,100
Accidental falls	8,500
Homicide	9,200
Emphysema	10,600
Suicide	12,000
Breast cancer	15,200
Diabetes	19,000
Motor vehicle (car, truck, or bus) accidents	27,000
Lung cancer	37,000
Cancer of the digestive system	46,600
All accidents	55,000
Stroke	102,000
All cancer	160,000
Active smoking ^{a,b}	350,000
Heart disease	360,000
All disease	849,000

^aEstimated, averaged over the entire 1970 U.S. population (including those not at risk; the risk is 8000 per 10⁵ in the nonsmoking population of cancer age, and 650,000 per 10⁵ in adult smokers).

^bBased on 1978 figures.

Source: Adapted from Lichtenstein et al.

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aversive action until the perceived "cost-benefit" ratio is acceptable. This usually means that risks are not entirely eliminated, i.e., reduced to zero, but rather reduced to the limit to which society or the individual is willing to pay.

Table 1.2, adapted from the work of Dinman and Rowe, gives the crude "boundaries of acceptable risk."⁴³ Fatal risks greater than 10^{-2} per year are generally unacceptable to society, and risks below 10^{-11} are below the threshold of concern. As a practical matter, risks below 10^{-6} per year are often considered acceptable by most individuals and tend to be below the

Table 1.2 Boundaries of Acceptable Risk

Annual Per Capita Risk	Societal Response, Degree of Acceptability
10^{-2}	Fatal illness and disease rates: society maintains expensive preventive and therapeutic medical institutions to mitigate risk. Smoking risk.
10^{-3}	Fatal accident rates: infrequent at this level; immediate action taken to reduce hazards.
10^{-4} Passive smoking (estimated average)	Fatal accident rates: public money is spent to control causes, police and fire depts. are supported, traffic controls are imposed. Average level of regulated voluntary risk by OSHA.
10^{-5}	Threshold of regulated voluntary risk. Society warns against dangers of fire, drowning, poisons.
10^{-6}	Threshold of regulation for hazardous air pollutants. Fatal accidents at this level are not of concern to most individuals (level of risk of death by earthquake in California, and of death in a civilian air crash). Society prescribes building codes for earthquake resistance, regulates commercial air travel. Proposed Nuclear Regulatory Commission Safety Goals for Nuclear Plant Accidents.
10^{-7}	Level of natural catastrophic involuntary risk — tornado, hurricane, lightning; weather forecasting services maintained, lightning protection prescribed in building codes.
10^{-8}	Food and Drug Administration Guideline "upper bound"; regulation of ordinary involuntary risk from oil, gas, coal, and nuclear power industries.
10^{-9}	
10^{-10}	Regulation of catastrophic risk from energy-producing industries.
10^{-11}	Threshold of concern (loss of life expectancies of the order of 10^{-5} days).

societal threshold of risk aversion, with the exception of certain catastrophic risks that have generated public fear. In the region between 10^{-2} and 10^{-6} , society may be willing to accept certain levels of risk higher than 10^{-6} because further reduction is beyond its ability to pay. In essence, a risk-benefit trade-off is made. This is typical for the risks associated with certain industrial activities, which, although they emit air pollutants, are perceived to be essential in some degree to society. In cases where risks cannot be quantified in this manner, federal regulatory agencies will often try to reduce risks by requiring "best available control technology" or "reasonably achievable control technology," defined by the perceived nature of the risk and ability of the regulated industry or society to pay. Quantitative risk assessment, where possible, is used to convince both the regulated industry and the public that the regulatory agency is not being arbitrary.

For example, the U.S. Food and Drug Administration has regarded risks of the order of 10^{-8} per year for carcinogenic residues in foods as "virtually safe." The Environmental Protection Agency has regarded cancer risks of the order of 10^{-7} to 10^{-6} per year as an approximate guideline for the regulation of carcinogenic hazardous air pollutants. The Nuclear Regulatory Commission has proposed guidelines for acceptable cancer mortality risks from reactor accidents of the order of 10^{-6} per year. The Royal Commission on Environmental Pollution in the U.K. has suggested that individual risks below 10^{-6} per year are "acceptable," whereas risks above 10^{-2} per year are "unacceptable." Judged by these guidelines of societal acceptability for carcinogenic risks, an involuntary lung cancer risk of nearly 10^{-4} per year from passive smoking would appear to require regulation.

On these grounds, then, society should regulate the risks of passive smoking. First, the risks of passive smoking are apparent; second, the benefits of passive smoking are not apparent; finally, a solution is available at virtually no cost: separate sections for smokers and nonsmokers in public places. This solution might be considered "reasonably achievable control technology"; although it does not eliminate the risk as would a complete ban, it can be achieved at relatively little social cost. Figure 1.3 illustrates the problem, and Figure 1.4 one solution.

In the workplace, a complete physical separation is required because of the cancer risk and to accommodate hypersensitives, but "best available control technology" should be considered here: complete bans on smoking on the premises. As a number of studies have shown, this solution benefits not only nonsmokers; it benefits smokers and results in dollar savings to employers as well, because the higher sick-leave and house-keeping costs caused by smokers disappear; an increasing number of industries are trying this approach.⁴⁶

Are such measures practical? A survey of 3,000 U.S. corporations in

"I'VE HEARD THE FOOD HERE IS VERY GOOD. MAYBE
WE CAN TAKE SOME HOME AND TASTE IT"



Figure 1.3
From *Herblock on all Fronts* (New American Library, 1980).

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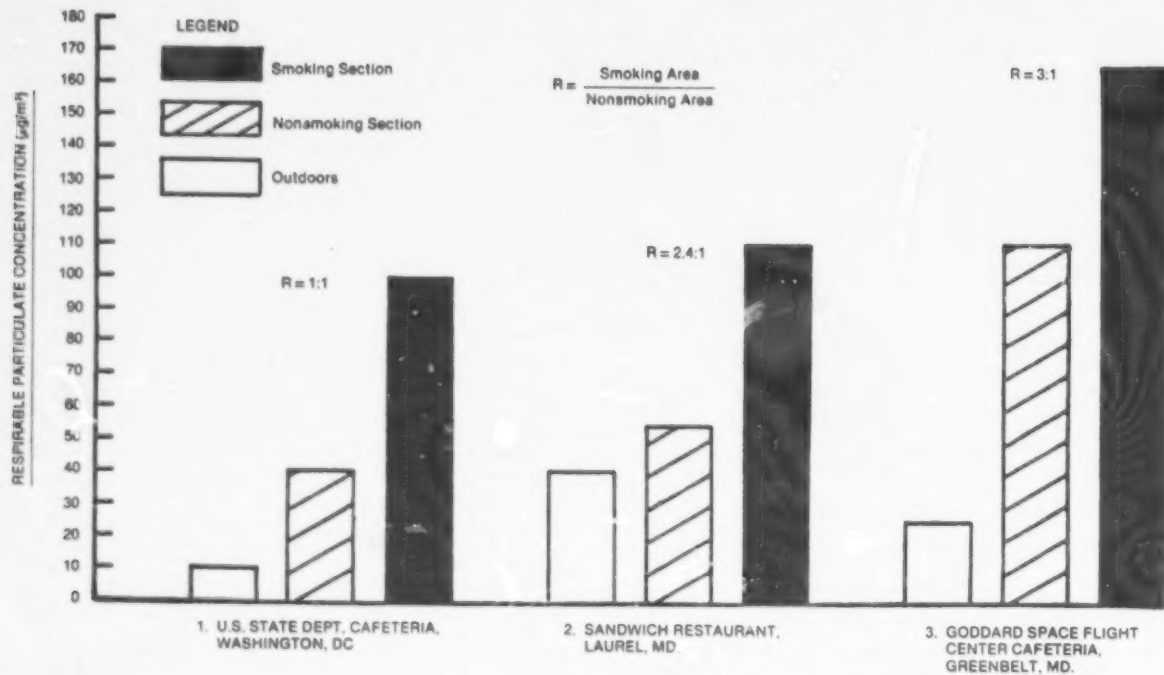


Figure 1.4
Relative Indoor/Outdoor Air Pollution Levels

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1979 (29 percent response rate) indicated that 42 percent of blue-collar companies surveyed permitted smoking only in designated areas, and another 28 percent prohibited smoking completely. The corresponding percentages for white-collar companies were poorer, 15 percent and 11 percent respectively. Thus 70 percent of the blue-collar companies and 26 percent of the white-collar companies have found restrictive control measures to be practical; 65 percent of the respondees indicated that they had had such policies since the 1964 Surgeon General's Report.⁶⁷ On April 1, 1984, Group Health Cooperative, a Seattle-based corporation with 5000 employees, became one of the nation's largest employers to ban on-the-job smoking; in addition, the 325,000 members will be unable to light up in Group Health hospitals or clinics, except under extenuating medically approved circumstances.⁶⁸

Conclusion

Cigarette smoking is a well-established vice of 70 years standing which is practiced by one out of three adults who presumably derive some "benefit" from this activity which also supports a \$15 billion industry. While cigarette smoking has been judged to be the single major cause of preventable death in the United States, regulation of cigarettes is nonexistent, and regulation of cigarette advertising has been de minimus, largely, it appears, because of the widespread and voluntary nature of the vice, and because of the effective defensive efforts of the tobacco industry.

On the other hand, an estimated one-half of the adult population is irritated to some degree by ambient tobacco smoke and about one out of 33 persons appears to be hypersensitive to tobacco smoke to the point where functioning normally in a smoky environment is very difficult or even impossible. If ambient tobacco smoke were emitted from a polluting industry into the outdoor air, it would be judged to be both a toxic and a carcinogenic air pollutant, subject to national hazardous air pollutant emission controls. Thus a double standard is in existence that judges indoor air pollution from tobacco smoke differently from outdoor air pollution from diesel buses or coke ovens. Given the similarities of indoor air pollution from tobacco smoke to outdoor air pollution from other combustion sources, for which society has taken risk-averse action in the interest of public health, should smokers have an untrammelled right to pollute an indoor space such as a public building, workplace, or residence without the consent of the nonsmokers who must breathe the pollution? If yes, how should society, employers, and individual nonsmokers respond to the potential for morbidity and mortality? As the asbestos industry is facing massive tort liability for failing to protect its workers against the hazards of asbestos, similarly the recently emerged scientific knowl-

edge of the health risks and air pollution levels generated by ambient tobacco smoke may establish a nexus between passive smoking health risk to workers and economic risk to employers. As we have seen, nonsmokers are beginning to assert tort claims against employers. At the least, if society yields smokers untrammelled rights to smoke in public indoor spaces, including workplaces, should it not require increased ventilation or air cleaning measures in such buildings, using the same logic used to limit criteria air pollutants from factory smokestacks and automobiles? Should it not require self-extinguishing cigarettes, control of cigarette additives, and limitation on side-stream tar and nicotine content, using the same logic used to control carcinogenic air pollutants from chemical plants? Isn't it time to treat ambient tobacco smoke as the hazardous air pollutant it is, and isn't it time to subject the tobacco industry to the same sort of controls that *all* other polluting industry must bear?

Finally, does the individual smoker have the moral right to cause harm in the form of physical irritation or carcinogenic risk to the nonsmoker? If so, how should smokers accept the following proposition: Suppose that individual nonsmokers, in defense of their asserted right to breathe tobacco-smoke-free indoor air, were to release a gas into indoor spaces where they were forced to breathe tobacco smoke. Suppose further that when sucked through the burning cone of a cigarette, pipe, or cigar this gas decomposed into irritating byproducts which caused moderate to intense discomfort to the smoker, much the way ambient tobacco smoke affects the nonsmoker. Would smokers feel that they had the inalienable right to gas-free air?

I assert that smokers have the right to enjoy the risks and benefits of smoking, just as they have the right to play Russian roulette. When they smoke indoors in the presence of nonsmokers, however, they are playing Russian roulette with nonsmokers' health. This they do not have the right to do. Therefore either smokers should abstain from smoking indoors or obtain explicit consent from each exposed nonsmoker (or from the parents or guardians of minors and infants). Smokers can refrain from smoking, smoke outside, or quit. Nonsmokers cannot refrain from breathing. Smokers' pollution harms nonsmokers; nonsmokers' breathing does not harm smokers. Smokers are on the same moral ground as were spitters around the turn of the century when public health laws restricted spitting in public buildings. The nonsmoker's pursuit of healthful breathing air does not infringe upon the health of smokers (in fact it may improve it to the extent that it forces them to cut down or to quit the habit). Thus, nonsmokers' right to clean indoor air is morally superior to smokers' right to pollute. As the awareness of passive smoking risks grows in nonsmokers, smokers will be increasingly, and accurately, viewed as playing a hard-nosed game with nonsmokers' health, a practice which can only invite increasing confrontation and social dissension.

Notes

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Senator STEVENS. Our next witness is Mr. Tollison, director of the Center for Study of Public Choice at George Mason University.

TESTIMONY OF ROBERT D. TOLLISON, DIRECTOR, CENTER FOR STUDY OF PUBLIC CHOICE, GEORGE MASON UNIVERSITY, FAIRFAX, VA

Senator STEVENS. Good morning.

Mr. TOLLISON. Good morning, Senator Stevens. I would like to thank you very much for having me here today. My name is Bob Tollison. I am director for the Center of Public Choice at George Mason University in Fairfax. I appear today on behalf of the Tobacco Institute.

I would like to summarize my remarks rather than read them. What I would like to talk about today is the economics of your proposal.

Perhaps the most basic axiom of economics is that there is no such thing as a free lunch. So I think we would all recognize that whatever else this bill may be designed to accomplish and whatever else it may accomplish, it is not a free lunch. It poses some significant costs to the Government and ultimately to the taxpayers.

What I would like to review very briefly today is a very tentative estimate of what those potential costs might be based on some very preliminary calculations that I have done.

The first category of costs is what I call lost Federal worker productivity costs. I don't know exactly how your proposed law would hit the ground, so to speak, in the Federal workplace, that is, how it would be implemented.

But suppose that it would be implemented in the following way: Suppose it would be implemented by giving Federal worker smokers two 10-minute smoking breaks a day. Based on that assumption of the implementation of this legislation, if one goes through the calculations of wage rates, occupational composition of the Federal work force, and applying this law only to Federal professional, technical and clerical workers, one comes up with an estimate of lost production, lost Federal worker production, of \$300 million a year.

That is a very conservative estimate which does not include the Federal blue-collar work force; it does not include any consideration of an equal 10-minute break two times a day for nonsmokers.

The first element of potential costs is lost productivity cost. The second cost is more obvious, I think. It goes to the fact that in the many of millions of feet of floor space that is owned and rented by the Government, that clearly, the implementation of this law is going to involve some workplace redesign, at the minimum, the posting of signs, and perhaps as much as \$100,000 per building might be seen as a very conservative estimate of the cost of altering the workplace to separate smokers from nonsmokers. Using only a subset of Federal buildings located in the continental United States, I estimate the cost of these alterations to be on the order of \$200 million a year.

So with no great leaps of faith, with no magic in the numbers, and with very conservative procedures, I put the cost of this legislation at half a billion dollars a year, with annually recurring costs of \$300 million.

Senator STEVENS. I don't understand the last increment. What was that for?

Mr. TOLLISON. I'm sorry. I have two categories of costs thus far. I have a \$300 million productivity cost and a \$200 million building redesign/sign-posting cost. There are only two categories.

The last category, which I can not quantify, goes to very special applications of the law. That is, how it would hit the ground in the Federal workplace; how it would be enforced; who would enforce it; who would mitigate disputes? Would Federal managers mitigate disputes rather than do other things? And last, if the law is to be implemented, by shuffling the work force from one floor to another, from one post to another, from one side of the partition to another, do we not have serious implications for Federal worker productivity by breaking up long-term relationships between workers?

So those are my categories of costs, Senator Stevens.

I think that my bottom line is that my numbers are very conservative. Indeed, this bill, whatever else it may accomplish, it is not a free lunch to the Government; it is not a free lunch to the taxpayers.

Senator STEVENS. Did you study any area that has implemented a policy such as my bill advocates over any period of time?

Mr. TOLLISON. No, sir.

Senator STEVENS. Did you check the actual costs of redesigning the facilities in the Government buildings in Minnesota, for instance?

Mr. TOLLISON. I have not.

Senator STEVENS. Did you check the cost of the signs, for instance? My State has been implementing such a law on buildings in general not just State buildings. But we just had testimony that the cost of that now for a period of 5 years has been \$20,000 for signs. I just wonder where you got the \$10 million figure for signs.

Mr. TOLLISON. I assumed one sign per building, \$25 per sign. Clearly, that is a conservative estimate, because one is going to need much more signs than this. One sign per building would not suffice.

Senator STEVENS. One of my illustrious predecessors used to say the biggest guy downtown right now is the sign painter. That is one thing we seem to have lots of, sign painters. They change the name of these offices so rapidly.

But your comment about physical alterations, what led you to that conclusion? That would be rather massive, wouldn't it?

Mr. TOLLISON. Sir, I honestly don't know how this legislation would go into effect building by building, agency by agency. But I can't conceive that it would not involve some minimal spending per building on redesigning the workspace.

Senator STEVENS. But you didn't travel to places to find out how it was done? For instance, my State implemented such a policy in a period of just months. It is a small State, that is correct, but it was imposed on buildings in general. I don't know of even one fist fight that occurred. I don't know of any modifications of buildings that have taken place, and I don't know of any productivity lost.

This is an interesting thing. Did you ever quantify what it does cost per day to the taxpayers for the average employee to go to the bathroom three times? [Laughter.] That is what you are saying. You lose productivity. Keep those people chained to the desk now.

Just make sure you understand this. You are saying, if they went out to smoke, rather than offend the people who would be sick, did you figure how long that would be? Suppose I had a secretary who doesn't like smoking and she is surrounded by three people that do smoke, and I lose one-quarter of her time a year because of illness. What is the loss of productivity?

Mr. TOLLISON. Sir, my point about smoking breaks is that if they ain't working, they ain't producing. I don't know what else they would be doing.

Senator STEVENS. I am biased and admit it, but I don't think you really admit it. That is the difference between my approach and yours. You have got a result and you quantified it. Did you quantify the other side of it? What about the loss to the Government and the taxpayers from people who stay home because they are sick?

Mr. TOLLISON. Sir, I have no data or no experience with Federal worker absentee rates or why they are absent. My guess about the Federal work force is the same as it is about the private work force. That is, the Federal work force and the Federal managers have accommodated this problem in work assignments, desk assignments, so on, and so forth, and that we really may not have a problem. It would be very much like the private sector where, if it ain't broke, don't fix it.

Senator STEVENS. It is my conclusion it is broke and that you are representing people who want to leave the smoking gun at the head of a lot of nonsmoking people in spite of the medical evidence that we now have that they suffer tremendous physical risk by working in areas where there is smoking.

Mr. TOLLISON. Sir, that may or may not be so. I am not a health expert. I am only testifying here as to the cost of the legislation.

Senator STEVENS. I respect you for that.

Senator Gore.

Senator GORE. Thank you very much, Mr. Chairman. Mr. Tollison, you are representing the Tobacco Institute.

Mr. TOLLISON. That is correct.

Senator GORE. You don't work for the Tobacco Institute, though, is that right?

Mr. TOLLISON. No, sir; I am a professor of economics.

Senator GORE. At the Center for Study of Public Choice?

Mr. TOLLISON. That is right.

Senator GORE. What is that center?

Mr. TOLLISON. That is an academic center located at George Mason University in Fairfax, about 25 miles from here. It is known for its economic theories of Government. I have several colleagues who are quite well-known, professional economists and have earned lots of accolades in professional economics.

Senator GORE. I see; do you get separate funding for that center in addition to the money you receive from the university?

Mr. TOLLISON. I do. We do, indeed. We have outside support.

Senator GORE. Does your outside support include the tobacco industry?

Mr. TOLLISON. No, sir.

Senator GORE. It does not?

Mr. TOLLISON. No.

Senator GORE. I say that for the record.

So how does it come about that you are speaking for the institute?

Mr. TOLLISON. Well, I have worked, off and on, for the tobacco companies and the Tobacco Institute for some 7 or 8 years now. I have a book coming out in October which is called "Smoking in Society," which is an edited collection about smoking, including a very nice chapter on the science of environmental tobacco smoke.

So I have done both academic and professional consulting work for tobacco for some 6 or 8 years.

Senator GORE. In addition to your work as a professor?

Mr. TOLLISON. That is right.

Senator GORE. All right. I just wanted to get that clear. You have a book coming out that includes a chapter on smoke in the work environment?

Mr. TOLLISON. Yes.

Senator GORE. Smoke in the environment.

Mr. TOLLISON. Right.

Senator GORE. In other words, the hazards to nonsmokers. Do you reach a conclusion about that?

Mr. TOLLISON. Sir, it is not my paper. The paper is by Domingo Aviado, who is an M.D. What Dr. Aviado did was, in effect, to survey the scientific literature on tobacco smoke. I am not an environmental scientist. I am not an M.D., but his conclusion was that in the average workplace environment, ambient tobacco smoke did not occur at such a level as to pose a significant health risk to nonsmokers.

Senator GORE. That is at odds with the prevailing scientific viewpoint, is it not?

Mr. TOLLISON. I don't know how one measures the prevailing scientific viewpoint rather than to look at the literature, look at the number of experiments that have gone on, look at the number of measurements that have taken place, and try to get our pulse on what the average result is.

I was trying to characterize what I think Dr. Aviado felt was the case.

Senator GORE. I am sure we will have other testimony in regard to the hazards of secondhand smoke. In fact, in reading the statements of earlier witnesses, I think there has already been reference to other views of what the literature says.

You don't deal in your book with the health risks to smokers, do you?

Mr. TOLLISON. Yes, we do.

Senator GORE. What is your conclusion there?

Mr. TOLLISON. Well, the chapter on smoking and health was written by Hans Eysenck, who is a very famous British psychiatrist.

Senator GORE. Psychiatrist?

Mr. TOLLISON. Yes, sir. If I get the gist of what is going on in research on smoking and behavior, the modeling, the scientific work that is going on now is that people are no longer simplistically linking smoking to health, but they are looking at personality types. They are looking at genetic types, and they are looking at a predisposition among certain types of people, both to smoke and to be prone to certain disease patterns such as heart disease.

So, the theme in these theories that seems to be driving behavior is personality and genotype rather than some simple relationship between smoking.

That is my understanding of where the modeling of smoking behavior is going, and so I think it is a quite fair statement to say that we don't yet know why people smoke, who is predisposed to smoke, nor what the consequences to any particular set of people are from smoking.

Senator GORE. So, this works from an analytical framework which presents the hypothesis that the incidence of disease and death among smokers might, in the opinion of the author of your chapter, be due to some common third factor?

Mr. TOLLISON. Indeed.

Senator GORE. Do you believe that?

Mr. TOLLISON. I believe it is a fruitful line of inquiry. I am a scientist. I close my mind to no avenue of inquiry. I think this is a particular one.

Senator GORE. As a scientist who has worked in this area for quite some time, do you believe that there is any longer any serious doubt about the fact that smoking causes cancer, heart disease, and chronic lung disease?

Mr. TOLLISON. I do. I think that we need much more work on the type of behavior that is at stake here and the type of person that behaves and the consequences of that behavior. Until we get it, I am not willing to draw any conclusions. I am certainly not willing to stretch the principle. If you run simple pairwise correlations between red meat consumption and long-term health consequences, we would get very similar results to the kind of results that one gets from running pairwise correlations on smoking and health.

Yet we are not proposing to ban red meat consumption in all the cafeterias where Federal workers eat.

Senator GORE. Yes; I think it is important for the view of the Tobacco Institute to be presented here, because the legislation proposed by the chairman is certainly a matter of great interest to the

tobacco industry. I am glad you have been able to come and testify. I guess I asked for it in drawing you into these areas about the linkage between smoking and health.

You know, as someone who comes from a State that has traditionally grown a lot of tobacco and still does, I have always felt that it was silly to continue denying the obvious: That smoking causes disease and death and is the largest preventable cause of death in the United States today.

Maybe in some areas they grow so much of it they have to pretend it is good for you, but even though we grow a lot of tobacco, most Tennesseans, including tobacco farmers, are sensible people and realize that the medical evidence is simply overwhelming.

I have told the Tobacco Institute in the past that I don't think they help their case by trying to pretend that the obvious is not true.

Again, you didn't come here to say that or provoke an argument; I drew you into those areas, and I didn't want to draw you into that to the point where I am attacking your credibility. However, I do believe that it does have a bearing. [Laughter.] I didn't mean to say it in a way that provokes that kind of response. I appreciate the fact that you are here, and I think that we should, Mr. Chairman, take into account the cost that Mr. Tollison is describing here.

I think we also have to take into account the fact that a lot of people believe that the proposals of the kind embodied in this legislation are just not practical. For those reasons, I think it is very important that both Mr. Tollison and the Tobacco Institute's viewpoint be presented here.

I will give you a chance to respond to what I said if you like.

Mr. TOLLISON. Well, I would only just say that if I understood Senator Stevens correctly, this bill was not really designed to go to the smoking and health issue. It is a bill essentially to make it more difficult for smokers to smoke at the workplace, not to get them to stop smoking. That was the Senator's preamble for our meeting this morning. I guess that would be my basic response.

Senator GORE. I think that the freedom of choice in this area is one that is a principle that is established. It is not going to change. But I honestly believe that if we as a country are going to move forward with a clear vision of what the problems are in this area of public policy, it is futile to continue quarreling over scientifically established facts. The linkage between smoking and health is an established fact. It is a fact. The industry may have liability concerns for not admitting it openly, but I don't think it is useful for scientists to pretend that the fact is not established. I just think it doesn't really get us anywhere.

Again, that is really outside the area of economics that forms the basis of your expertise, and I am grateful for your appearance here.

Mr. TOLLISON. Thank you.

Senator GORE. Thank you.

Thank you, Mr. Chairman.

Senator STEVENS. And I don't discount your point that passage of this bill may cost the taxpayers some money on that side of the ledger. I do quarrel with you over not having quantified the other side of the ledger. My job, and I think Senator Gore's job, is to try

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and see what we should do to assure the protection for the non-smoking Federal employee and the nonsmoking person who enters a Federal building in terms of whether there is a risk there for those people.

We do thank you for your study.

Mr. TOLLISON. Thanks very much.

[Mr. Tollison's prepared statement follows:]

Testimony of
Robert D. Tollison
on the
"Non-Smokers Rights Act of 1985"
S. 1440

Before U.S. Senate
Committee on Governmental Affairs
Subcommittee on Civil Service, Post Office
and General Services

September 30, 1985

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Mr. Chairman and members of the Committee, my name is Dr. Robert D. Tollison. I have a Ph.D. in economics from the University of Virginia, and am presently a Professor of Economics and Director of the Center for Study of Public Choice at George Mason University in Fairfax, Virginia. I have been asked by The Tobacco Institute to appear here today to give my views on the bill introduced by Senator Stevens, entitled the "Non-Smokers Rights Act of 1985," which would restrict smoking in all U.S. Government buildings except in designated smoking areas.

The proposed legislation would impose substantial costs on this country's taxpayers, including the costs associated with reduced productivity of federal workers, the expenses involved in posting signs and making the physical alterations to offices necessary for accommodating the needs of the employees and members of the public who use Government buildings, and the costs of enforcing the law. I also would urge the Committee to consider carefully the social implications of the bill as well as broader questions concerning the proper role of government and government regulation of individual behavior. Such careful consideration is especially important in an era when federal budget deficits are running at record levels and the President and the Congress are seeking ways to reduce the tax burden on our citizens.

Overview of the Proposed Law

The bill before the Committee requires that smoking be limited to designated smoking areas in all government buildings, including any buildings under the jurisdiction and control of a department or agency of the executive branch of the United States government, the United States Congress or the judicial branch of government. The bill apparently would cover all military installations as well State Department facilities, whether located in the United States or a foreign country. In each case, the responsible entity is to promulgate rules and regulations restricting smoking to designated smoking areas. Other provisions of the bill require the posting of signs that specify the areas in the building where smoking is allowed and where it is prohibited.

As written, the legislation contains certain ambiguities and definitional problems that will create implementation difficulties. Some very important questions surround the definition of a "smoking area." The bill contains absolutely no guidelines as to how large or small smoking-permitted areas must be. In a federal office, does the law require that smoking and nonsmoking workers be separated? Will it be necessary to install physical barriers and smoke-removal devices? What proportion of the floor space of an office may be set aside for smokers? What arrangements are to be made for members of the public who visit government buildings? The only guidance given in the law is that "reasonable accommodations" be made. This vague language is likely to result in unequal

treatment of individual federal workers and visitors.

The bill is silent as to who would actually enforce the law. The various United States Attorneys Offices around the country presumably would play a major role in enforcement -- but could individuals also file civil suits under the bill? And what law enforcement entity would have primary enforcement authority for U.S. Government facilities outside the United States? One can imagine scenarios in which federal security officers and other law enforcement personnel would, in addition to their responsibilities for protecting the safety of federal employees and property and for guarding classified information, be required to ensure that individuals smoke only in designated areas. The point is simply that it is unclear how the proposed law would be enforced. Nonetheless, one thing is clear. There is no such thing as a free lunch. Either existing enforcement personnel would be deflected from other enforcement activities, or extra enforcement officers would have to be added to the federal payroll.

The Cost of Restricting
Smoking in Government Buildings

As mentioned earlier, taxpayers will face substantial costs if the proposed restrictions on smoking in Government buildings are adopted. The major source of those costs is the potential loss in federal worker productivity that would occur if employees are not allowed to smoke at their work stations or have to be moved because of smoking area designations. If, for example, the bill is implemented in a manner that results in the banning of smoking in many open spaces occupied by both smokers and nonsmokers, and in the areas of government buildings to which the general public has access, it may be necessary to accommodate smokers by granting them "smoking breaks." Such breaks are costly because they result in lost work time and, therefore, lost production.

A rough estimate of those productivity losses can be made by considering some conservative numbers. As of 1981, the most recent year for which detailed data are available, there were 392,500 clerical and 677,000 professional and technical workers employed by the federal government.¹ Those individuals were paid average annual salaries of \$15,800 and \$24,398, respectively, which translate into hourly wages of \$7.90 and \$12.20, assuming

¹U.S. Department of Commerce, Bureau of Census, Statistical Abstract of the United States 1984, Washington, D.C.: USGPO, December 1983, p. 337.

250 eight-hour workdays per year.²

Figures published by the Journal of Occupational Medicine suggest that 38 percent of clerical and 30.7 percent of professional and technical workers smoke. If the incidence of smoking among government employees is the same as in the civilian workforce as a whole, then the proposed restriction on smoking in Government buildings will affect 149,150 clerks and 207,839 professional and technical employees. Under the assumption that smoking employees would be given two ten-minute breaks, the lost work time would be 20 minutes per day per smoking employee. Valuing the lost time on the basis of 1981 employment and compensation rates, and again assuming a 250-day work year, yields \$309.5 million as an estimate of the dollar value of annual productivity losses. Note that this cost will grow year after year with increases in government compensation rates. Note also that the \$309.5 million figure is quite conservative: it does not include the value of lost work time for the 453,000 government employees in blue-collar occupations. Nor does it account for the possibility that breaks would be granted to nonsmokers as a matter of equity.

In addition, our estimates of productivity losses cannot account for the negative economic effects of segregating smoking and nonsmoking employees -- a likely result of this legislation. Federal managers may, for example, station smoking employees on one floor and nonsmoking employees on another. The implications

²Ibid. The average salary of professional and technical workers was arrived at by weighting the average salaries in the two occupational categories by the number employed.

for productivity of such an arbitrary re-arrangement of work assignments are clear. People will be moved, long-term work relationships will be severed, new routines will have to be formed, and so on.

In estimating the economic impact of instituting smoking restrictions in Government buildings, productivity losses are just the tip of the iceberg. The taxpayers would be forced to bear additional costs in the form of the expenses associated with posting signs and making the physical alterations to the workplace necessary to establish smoking areas that accommodate both smokers and nonsmokers. As of September 30, 1982, departments and agencies of the United States owned 387,396 buildings within the fifty states comprising nearly 2.5 billion square feet of floor area.³ These figures do not include U.S. Military installations. In addition, those same departments and agencies leased just over 204 million square feet of floor space at 49,112 U.S. locations.⁴ If physical alterations costing just \$1,000 are necessary at only half of those sites, the cost will be \$218.3 million. Moreover, the purchase of one \$25 sign for each building that specifies the locations where smoking is permitted will cost a total of \$10.9 million. Again, these figures are conservative because they do

³U.S. General Services Administration, Office of the Administrator, Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1982, Washington, D.C.: GSA, March 1983, p. 43.

⁴U.S. General Services Administration, Office of the Administrator, Summary Report of Real Property Leased to the United States Throughout the World as of September 30, 1982, Washington, D.C.: GSA, March 1983, p. 29.

not include those buildings owned or leased by the Congress or by the U.S. courts. They also only include one sign per building in U.S. government buildings located both within and outside the fifty states.

The restrictions on smoking in government buildings will entail other costs that are not possible to quantify. For example, agency heads and other administrative personnel will face the problem of resolving disputes between employees stemming from the law's lack of guidelines concerning what constitutes "reasonable accommodations for the needs of smokers and nonsmokers." S. 1440, Sec. 3(b)(1)(A). In short, taxpayers will be forced to bear substantial direct and indirect costs if the bill is enacted.

It also is disturbing to note that the smoking restrictions will most likely operate in the area of buildings, such as reception areas and open office spaces, where smokers and nonsmokers come in contact with one another. Similar restrictions will not be necessary for private, enclosed offices occupied exclusively by smokers. This means that the law will have a disproportionate impact on secretarial and clerical personnel. In the Justice Department, for example, many attorneys will not be affected but the typists, file clerks and receptionists will. If the Congress had before it a law to raise taxes on people who work in open offices but not those who work in private offices, such a bill would quickly be rejected. Senator Stevens' bill would have the same kind of effect.

The Premise of the Law is Faulty

Senator Stevens' bill is predicated on the notion, among others, that "smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance, and workers' compensation." S. 1440, Sec. 2(3). Economic theory will not support such a finding because it confuses private costs and social costs. If smokers indeed face increased health risks or are absent from work more often than non-smokers, they themselves bear the related costs in the form of reduced wages and promotion opportunities. To also count these private costs as social costs represents simple double counting. Even in the most stodgy bureaucracy, employees with high rates of absenteeism are penalized in terms of pay and promotion. Thus, if smokers have more health problems than nonsmokers, they pay the costs.

To summarize, the "Non-Smokers Rights Act of 1985" is an ill-conceived attempt to regulate personal behavior. Among its other defects, it contains vague language on what standards agencies are to meet in complying with the law, it establishes no specific enforcement mechanism and the bill is based on the faulty premise that smokers consume public health resources without paying for them. More importantly, the bill would cost at least one-half billion dollars per year to implement. Such substantial expenditure of taxpayer funds on a matter already being handled effectively on an individualized basis seems impossible to justify.

ECONOMIC IMPACT OF INSTITUTING
SMOKING PROHIBITIONS
IN U.S. GOVERNMENT BUILDINGS

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APPENDIX

Appendix A

Footnotes

Executive Summary

The following report assesses the economic impacts of imposing smoking restrictions in U.S. Government buildings. The bill, introduced by Senator Ted Stevens (R-AK), is analyzed, the potential, as described in S. 1440, impacts of the smoking restrictions are discussed and the costs of those impacts are then quantified, where possible. The last two sections are devoted to a consideration of the alleged social costs of environmental tobacco smoke and the need for government regulation. A section-by-section summary follows.

Section I: IntroductionSection II: Overview of the Stevens Bill

The major provisions of the bill are reviewed and definitional problems and ambiguities are discussed. Questions are raised as to the exact specifications of the "smoking area" and the effectiveness of enforcement efforts. Other questions are raised and potential problems are highlighted.

Section III: Economic Impacts of the Proposed Restrictions

U.S. taxpayers will bear significant costs if the smoking ban is imposed. This section discusses these costs, including the

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cost of physical alterations and signs, and productivity losses in the public sector.

The potential costs of the non-smoking legislation are substantial. For example, if physical alterations costing just \$1,000 are necessary at only half of the buildings covered, direct costs of \$218.3 million will result. Productivity losses among public sector employees could cost \$309.5 million, based on conservative estimates. Other losses suffered are of similar magnitude.

In summary, the direct costs to the taxpayers are:

(1) Productivity Losses (recurs annually)	\$309.5 million
(2) Physical Alterations	218.3
(3) Signs	<u>10.9</u>
 TOTAL	 <u>\$538.7 million</u>

It is important to note that these cost estimates do not cover the entire number of affected buildings or affected federal employees. Data limitations precluded total coverage. Our estimates are, therefore, very conservative.

Also, note that our estimates assume reasonable enforcement of the proposed law. Obviously, costs will be higher if more is spent on enforcement, and costs will be lower if enforcement efforts are nil.

Section IV: Prohibiting Smoking and the Impact on Individuals

There are certain inequities inherent in the smoking ban. This section discusses the increased potential for abuse of enforcement authority if the smoking prohibitions are instituted. In addition, it presents evidence that illustrates how minorities and low- and moderate-income individuals are more likely to be charged with violating nuisance laws, and thus more affected by the smoking legislation.

Disproportionate impacts on low- and moderate-income working people are also discussed and supported by data detailing smoking customs by occupation and income.

Section V: Regulation and Social Cost

Government regulation may be warranted when two factors are present: (1) "social" costs are present because of private market failure, and (2) these costs are sufficiently high to merit government action. A detailed discussion of the difference between social and private costs follows. "Social" costs exist when someone is made worse off by the action of another and no compensation is made by the offender to offset this condition. We argue that smoking may impose private costs on smokers, but does not impose social costs. Government regulation is thus unwarranted.

Section VI: Conclusion

The report attempted to quantify the economic effects of severely restricting smoking in all U.S. Government buildings. The costs of imposing these restrictions, estimated with the most recent available data, exceed \$538 million, and would be borne

directly by U.S. taxpayers. Over 50 percent of these costs will be incurred year after year, and increase with inflation. The negligible benefits of the Stevens bill have also been detailed, as have the inequities of the legislation.

The Congress must consider priorities in its deliberations on this issue. Given the current economic climate, the serious social needs that exist and the limited resources available to the public sector to meet these needs, is such a law worth the consequences?

I. INTRODUCTION

The Congress is considering a bill which would restrict smoking in all U.S. Government buildings. The economic impacts of the proposed law have not been quantified in the debate, yet they have the potential to impose significant costs on U.S. taxpayers.

We feel that Congress must consider the economic and social implications of this law, the costs and benefits expected to accrue to all affected parties, and the broad questions concerning the proper role of government and government regulation of business and individual behavior before reaching a final decision.

This study will review these major issues. In the following report, we will discuss the economic impacts of a law in general terms and quantify to the extent possible the costs that will be imposed. Arguments and evidence will be presented in opposition to the legislation.

In this report, we have attempted to lay out a comprehensive set of arguments in support of our position. We have tried to avoid the emotionalism that surrounds an issue such as public smoking and have relied on the economic facts available to us. Many of the arguments and cost estimates are based on verifiable data, while others are more difficult to quantify. We have decided, however, to be as complete as possible and, therefore, to present all arguments that we feel should be considered.

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II. OVERVIEW OF THE STEVENS BILL

A. Review of the Major Provisions of the Legislation

1. Coverage

The bill under consideration, entitled the "Non-Smokers Rights Act of 1985," requires that smoking be limited to designated smoking areas in all U.S. Government buildings, including those buildings under the control of the Administrator of the General Services Administration, the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives, and the Administrator of the Administrative Office of the United States Courts. In each case, the agency having jurisdiction is to promulgate such rules and regulations as may be necessary to designate smoking areas that "make reasonable accommodations for the needs of the smokers and nonsmokers who use the Government buildings." Signs specifying the areas within each building where smoking is allowed and where it is prohibited must be posted.

2. Enforcement

No specific enforcement mechanism is established.

B. Definitional Problems

1. Definition of the designated smoking area

As written, the legislation contains certain ambiguities and definitional problems that will create difficulties in compliance and enforcement. Some very important questions surround the definition of a "smoking" area. No guidelines are given as to what arrangements must be made to implement the smoking restrictions. In a federal office, does the law require that smoking and nonsmoking workers be separated? Will it be necessary to install physical barriers and smoke-removal devices to reduce the amount of smoke in areas adjacent to designated smoking areas? What proportion of the floor space of an office may be set aside for smokers? What arrangements are to be made for members of the public who visit Government buildings? The only guidance given in the law is for "reasonable accommodations for the needs of the smokers and nonsmokers who use the Government buildings." This vague language may result in different standards which vary from building to building, or from jurisdiction to jurisdiction, and cause unequal treatment of federal workers and visitors.

2. Enforcement

The bill is silent as to who shall actually enforce the law. Enforcement may therefore be haphazard, with the result that few smokers will ever actually face penalties. Thus, the extent of compliance with the law will ultimately depend on the existing good manners and consideration of others. One can also

imagine, however, scenarios in which federal security officers and other law enforcement personnel would, in addition to their responsibilities for protecting the safety and property of federal employees, as well as for guarding classified information, be required to ensure that individuals smoke only in designated areas. Such priorities should be reexamined.

3. The Premise of the Law is Faulty

Senator Steven's bill is predicated on the notion that "smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance, and workers' compensation." Economic theory will not support such a finding because it confuses private costs and social costs. If smokers indeed face increased health risks or are absent from work more often than nonsmokers, they themselves bear the related costs in the form of reduced wages and higher health insurance premiums. To also count these private costs as social costs represents simple double counting. Admittedly, the adjustments which force individuals to bear the full costs of their own behavior are less likely to take place in a public enterprise than they would in a private market setting where, for example, it pays health insurers to offer lower premiums to nonsmokers. It is nonetheless true that federal workers who smoke cannot avoid completely any costs associated with smoking. Even in the most stodgy bureaucracy, employees with high rates of absenteeism are penalized in terms of pay and promotion. Thus, if smokers have more health problems than nonsmokers, they pay the costs.

It is also worth pointing out that diseases allegedly related to smoking represent a trivial proportion of the nation's health bill. A 1980 study by the Health Care Financing Administration revealed that lung cancer patients account for only 1 percent of the Medicare patients in short-stay hospitals, and a slightly higher percentage of the costs of operating these facilities.¹ Moreover, even if we attribute all hospital admissions for chronic heart disease to smoking, we still have accounted for less than one-tenth of Medicare patients. The numbers simply do not add up. Smoking is not a major contributor to public health costs.

C. Conclusion

To summarize, the "Non-Smokers Rights Act of 1985" is an ill-conceived attempt to regulate personal behavior. Among its other problems, the bill is based on the faulty premise that smokers consume public health resources without paying for them, it contains vague language on what standards agencies are to meet in complying with the law, and it establishes no specific enforcement mechanism.

In addition to these items, U.S. taxpayers will be forced to bear significant costs associated with compliance. The costs are outlined and explained in Section III.

III. ECONOMIC IMPACT OF THE PROPOSED RESTRICTIONS

A. Productivity Losses

As was mentioned earlier, the taxpayers will face substantial costs if the proposed restrictions on smoking in Government buildings are adopted. The major source of these costs is the potential loss in federal worker productivity that would occur if employees are not allowed to smoke at their worksite or have to be moved because of smoking area designations. To comply with the law as written, it may be necessary to ban smoking completely in many open office spaces occupied by both smokers and nonsmokers, and in the areas of Government buildings to which the general public has access. If such regulations are prescribed, banning smoking in work spaces, then it may be necessary to give "smoking breaks." Such breaks are costly because they result in lost work time and, therefore, lost production.

A rough estimate of these productivity losses can be made by considering some conservative numbers. As of 1981, the most recent year for which detailed data are available, there were 392,500 clerical, and 677,000 professional and technical workers employed by the federal government.² These individuals were paid average annual salaries of \$15,800 and \$24,398, respectively, which translate into hourly wages of \$7.90 and \$12.20, assuming 250 eight-hour workdays per year.³

Figures published by the Journal of Occupational Medicine suggest that 38.0 percent of clerical, and 30.7 of professional

and technical workers smoke. If the incidence of smoking among government employees is the same as in the civilian workforce as a whole, then the proposed ban on smoking in Government buildings will affect 149,150 clerks, and 207,839 professional and technical employees. Under the assumption that smoking employees would be given two ten-minute smoking breaks, the lost work time would be 20 minutes per day per smoking employee. Valuing the lost time on the basis of 1981 employment and compensation rates, and again assuming a 250-day work year, yields \$309.5 million as an estimate of the dollar value of annual productivity losses. Note that this cost will grow year after year with increases in government compensation rates. Note also that the \$309.5 million figure is quite conservative. It does not include the value of lost work time for the 453,000 government employees in blue-collar occupations. We exclude blue-collar workers because the disparate nature of their work environments makes it difficult to generalize about the impact of the proposed law. The law, for example, will impact a federal blue-collar worker in a government plant, but not a federal worker who works outside. Nor does our estimate account for the possibility that breaks would be granted to nonsmokers as a matter of equity. Extending the break time to all clericals, for example, would cost the taxpayers an additional \$160.2 million, raising the value of lost work time from \$309.5 million to \$469.7 million. Including other employees obviously adds to these costs.

The estimate of \$309.5 million in productivity losses is based on two principal assumptions. First, it was assumed that the incidence of smoking among clerical and professional and

technical workers in the public sector is equal to the national averages in those job categories. This assumption tends to understate the productivity loss to the extent that the incidence of smoking among government workers may exceed the national average. Second, it was assumed that as a result of the law smokers will be given two ten-minute smoking breaks per day. It is of course possible that the number and length of breaks allowed will be more or less than has been assumed. If, smokers are given only one ten-minute break per day, for example, the cost to taxpayers of lost productivity will be \$154.8 million annually. A range of estimates for these losses under alternative assumptions concerning the number of workers affected and the number and length of smoking breaks allowed is given in the following table.

The main point, however, is that even if formal smoking breaks are not instituted (for instance, smokers may be required to smoke only during existing coffee and lunch breaks), smoking employees will be less productive at their worksites. For example, they may take more, or longer, trips to the water fountain or restroom. Such factors can easily translate into ten or twenty minutes of lost productive work time per day, generating costs on the order of magnitude we have estimated.

Indeed, there is good reason to expect that the proposed law would lead federal managers to segregate smoking and nonsmoking employees. For example, smokers would work on one floor of a building and nonsmokers on a separate floor. The implications for productivity of such an arbitrary rearrangement of work assignments are clear. People will have to be moved, long-term work relationships will be broken up, new routines will have to be

Productivity Losses Under Various Assumptions Concerning Types of Affected Employees and Number and Length of Smoking Breaks^a

Employees Affected	One Five-Minute Break	One Ten-Minute Break	Two Ten-Minute Breaks	Two Fifteen-Minute Breaks
Clericals who smoke	\$ 24.6	\$ 49.1	\$ 98.2	\$147.3
All clericals	\$ 64.6	\$129.2	\$258.4	\$387.6
Professional and technical workers who smoke	\$ 52.9	\$105.7	\$211.3	\$317.0
Clericals and professional and technical workers who smoke.	\$ 77.4	\$154.8	\$309.5	\$464.3
All clericals plus professional and technical workers who smoke	\$117.5	\$234.9	\$469.7	\$704.6

^aMillions of 1983 dollars.

learned, and so on. Our estimates of productivity losses cannot account for such effects, but the potential for further losses along these lines is apparent.

B. Physical Alterations and Signs

In estimating the economic impact of instituting smoking restrictions in Government buildings, productivity losses are just the tip of the iceberg. The taxpayers would be forced to bear additional costs in the form of the expenses associated with posting signs and making the physical alterations to the workplace necessary to establish smoking areas that accommodate both smokers and nonsmokers. As of September 30, 1982, departments and agencies of the United States owned 387,396 buildings within the 50 states, comprising nearly 2.5 billion square feet of floor area.⁴ In addition, these same departments and agencies leased just over 204 million square feet of floor space at 49,112 U.S. locations.⁵ If physical alterations costing just \$1,000 are necessary at only half of these sites, the cost will be \$218.3 million. Moreover, the purchase of one \$25 sign for each building that specifies the locations where smoking is permitted will cost a total of \$10.9 million. Again, these figures are conservative because data limitations precluded coverage of those buildings owned or leased by the Congress and by the U.S. Courts; data on Government buildings located outside the 50 states were also unavailable.

Obviously, these are conservative estimates. More than one sign will be required per facility (facilities, for example, with

multiple entrances). Also, besides the value of lost work time, there will be other productivity costs arising from the potential segregation of smokers and nonsmokers.

C. Additional Costs

The ban on smoking in Government buildings would entail other costs which are not possible to quantify. For example, agency heads and other administrative personnel will face the problem of resolving disputes between employees stemming from the law's lack of guidelines concerning what constitutes "reasonable accommodations" for the needs of smokers and nonsmokers. In short, the taxpayers will be forced to bear substantial direct and indirect costs from the imposition of the restrictions on smoking.

D. Summary

U.S. taxpayers will be forced to bear significant direct costs from imposition of the smoking restrictions in Government buildings. Even our conservative estimate totals \$538.7 million without inclusion of any estimate of legal costs resulting from the serious ambiguities of the legislation. In most situations, smoking-related problems are resolved voluntarily. Thus, taxpayers are being asked to bear a large burden for no discernable benefit.

The next section will discuss the inequitable effects of a law on individuals.

IV. RESTRICTING SMOKING AND THE IMPACT ON INDIVIDUALS

Major taxpayer costs have been identified in the previous discussion. Here, we will highlight some of the inequities inherent in restricting smoking.

Failure to weed out non-essential laws creates a situation where the potential for abuse of enforcement authority is maximized. The results of such a situation can be tragic. For example, in the past, a Chicago man died as a result of injuries he received while being arrested for allegedly violating a local non-smoking ordinance. Quoting from a Chicago Sun-Times account of the incident, "The officers, assigned to the Department's mass transit unit, were wearing civilian clothes on duty. They said that they identified themselves and asked Ramey to put out his cigarette, but that he refused, and resisted when they tried to arrest him. On Wednesday, (the next day), the Cook County medical examiner's office said Ramey's death was a homicide. He suffered shock from multiple injuries, including two broken ankles, apparently inflicted with a blunt object, the office said."⁶

The Stevens bill would implement smoking restrictions in Government buildings and, therefore, increase the probability of such incidents occurring. Although this kind of abuse can probably not be totally eliminated, it can certainly be minimized by resisting enactment of non-essential legislation.

One issue that the Congress should be aware of is the fact that a preponderance of individuals charged with violating

nuisance laws are minority or low-income individuals. Evidence suggests that the probability of a minority or a low-income person being cited for a smoking violation is much greater than the probability of a well-dressed suburbanite. We have some evidence to corroborate this assertion. For example, Chicago instituted a Smoker's Court to hear cases involving violations of the City's anti-smoking ordinances. Approximately ninety percent of those who were arrested for violating these nonsmoking laws were members of minority and low-income groups. Also, in New York, more than 55,000 summonses were issued to persons who allegedly violated health code regulations such as the non-smoking ordinance. Of these 55,000 summonses nearly 40,000 were issued to Blacks and Hispanics.⁷

Not only are minorities and low-income individuals more likely to be cited for violations, the disruption to their lives for these violations is likely to be much greater than it is for other individuals. Take just one example from the Chicago Smoker's Court history. In 1976, a woman was arrested for smoking on one of the City's elevated trains. She was unable to post the required \$50 bond and was forced to spend the night in jail.⁸ Most people would agree that spending time in jail for a violation of a non-smoking ordinance is punishment not befitting the crime.

There are other aspects of the law which are disturbing. It could restrict smoking in open workplaces, but does not appear to apply to private offices. In a law office, the attorneys will not be affected but the typists, file clerks, and receptionists will. This list goes on. As this reveals, the sanctions proposed by

this law will be directed disproportionately at low- and moderate-income individuals and, the results are discriminatory.

If the Congress had before it a proposal which would increase the taxes on individuals who work in open offices but not on individuals in private offices, such a proposal would be quickly rejected. Smoking restrictions would have the same kind of disproportionate impact.

This unfairness is supported by data on the smoking habits of the population according to occupation. A close look at available data indicates that there are significant variations in smoking habits by occupation and that the actual impact of the law will be much greater upon certain categories of workers than on others.

Tables 1 and 2 (see Appendix A) show by detailed occupation percentages of persons who smoke. These numbers demonstrate that the effect of the proposed smoking ban will be felt by occupations which traditionally are referred to as blue-collar. It is clear that the proposed law will have a disproportionate impact upon low- and moderate-income federal workers.

Data on smoking by income class supports this contention. Table 3 (see Appendix A) shows the percentage of smokers by income according to the latest survey (1980) conducted by the National Center for Health Statistics. As the data reveal, the percentage of people who smoke between the ages of 25 and 65 falls as income increases. For example, over half of the 35-44 year-olds who earn less than \$7,000 smoke, while only 35% of those earning over \$25,000 smoke. As the data illustrates, the incidence of smoking is higher among lower-income groups.

In summary, application of smoking restrictions in Government buildings may have a disproportionate impact on low- and moderate-income working people.

The next section will discuss the appropriateness of government intervention in the area of personal behavior.

V. REGULATION AND SOCIAL COSTA. Government Regulation

A few years ago, the Fire Chief of Wichita, Kansas prohibited all newly hired firefighters from smoking whether they were on or off duty. As the President of Local 666 of the International Association of Firefighters so eloquently responded, "What comes next? Will they tell us we have to live in white houses or drive blue cars?"⁹ The issue of governmental interference in the private activities of its citizens is extremely controversial, as is the question of the government's role in monitoring the activities of the workplace.

Generally, in instances where government action may be deemed necessary, the decision to interfere with private commerce and the rights of private owners has been made with extreme caution. Such action may be taken to remedy a situation when the private market fails to produce an appropriate or desired outcome, resulting in social costs to society which can only be rectified by government intervention. For example, the costs to society of water pollution were deemed sufficiently high to precipitate passage of the Clean Water Act of 1972.

In the case of pollution, private businesses did not have sufficient incentives to refrain from emitting effluents into our waterways. Therefore, Congress imposed sanctions against an activity ~~it~~ determined was harmful to the public (i.e., pollution). Government action was taken to ensure that private

businesses would take into account in their production process not only the private costs of inputs, such as capital and labor, but also the social costs of the pollution they created. Private owners were compelled to reduce pollution only when it became obvious that social costs of pollution were significant and that the private market, by itself, would not create the incentives for businesses to reduce pollution. This so-called "market failure" and the presence of high social costs precipitated government intervention. On the other hand, in the absence of private market failure and significant social costs, government action is not only unwarranted but can actually be detrimental to the efficient operation of our economy.

The Stevens bill attempts to regulate the personal behavior of federal workers and may impose substantial costs on the taxpayers. It is the contention of some that benefits would result from this legislation. There is some question, however, whether the proponents of the law have not confused private costs with social costs in their efforts to promote adoption of the law. Before a comparison of costs and benefits of the law can be considered it is important that the distinction between private costs and social costs be understood. In the following section, an explanation of the difference between social and private costs and an examination of the alleged private and social costs of smoking are presented. This discussion should assist the Congress in its consideration of the legislation.

B. Social Versus Private Costs

The Congress must first determine whether there are social costs associated with smoking and then, if social costs are positive, it should weigh the costs and benefits of its action. The following example illustrates what we mean by "social cost".

Consider a utility which, prior to government regulation, generates electricity by burning coal. Soot, a by-product of the production of the electricity, escapes from the utility's smokestacks. In order to generate the electricity, the utility must pay directly for capital and labor inputs. Air pollution control equipment which would remove the soot is costly and not essential to production and, therefore, the utility has no incentive to install it. As a result, the soot blows downwind and soils laundry drying on the line, cars, homes, etc., imposing clean-up costs on people living in the area. The total cost of the production of electricity is actually the cost of cleaning the private property besmirched by the soot (the social cost) as well as the private costs (the resources such as capital and labor). Because the utility does not account for social costs in its production process, the price that consumers pay for the electricity does not reflect the total cost of production.

In this example, the costs created by the production of the soot are uncompensated costs because they are not paid by the utility or its customers, but are paid by the private individuals affected by the soot. This uncompensated cost, often called an externality, represents a social cost. There are various ways to force the utility to take these social costs into account. For example, the government could actually prohibit the emission of

soot from the smokestacks, thus requiring it to totally eliminate the production of soot. Alternatively, government regulations which mandate the installation of air pollution control equipment could be promulgated to minimize soot production, again eliminating the uncompensated or social costs. In both instances, government regulation of the soot production has forced the utility to internalize the social costs resulting from its behavior and, by so doing, has increased economic efficiency. The critical point in this example is that the government action was precipitated by the presence of social costs in the production of electricity. If there had not been social costs involved, there would have been no reason for the government's intervention.

In discussing whether or not to restrict smoking, it is necessary to distinguish between the private costs of smoking and the social costs, if any. In the absence of significant social costs, government intervention is not warranted.

C. Costs of Smoking: Private Versus Social Costs

Some proponents of such legislation always refer to studies which show that smokers are absent from work more often than non-smokers and that the loss of production from these workers is a significant cost of smoking. Advocates contend that a law restricting smoking in the workplace would have the salutary effect of reducing employee absences and, therefore, would provide significant benefits to the state. In other words, it has been alleged that there are social costs associated with smoking and, hence, social benefits to be derived from prohibiting smoking. Closer examination of this assertion indicates that a common

error, confusion of social and private costs, has been made.

As stated above, a social cost exists when one individual is made worse off by the action of another individual and no compensation is made by the offender to offset this condition. The example cited previously concerning the soot from the electric utility is an example of a social cost. If it is in fact true that federal employees who smoke are absent from work more often than nonsmokers and that these additional absences are caused by smoking (note that these two assertions are unsubstantiated), these production losses would measure the private costs to the individual smoker (assuming a wage loss is suffered) and would not represent a social cost.

Another argument that has been made by advocates of smoking restrictions concerns the costs of increased expenditures by society for treatment of illnesses allegedly attributable to smoking. Again, this is another case of mistaking private costs for social costs. Since the evaluation of this argument follows that of the earlier comments, it can be dispatched with less discussion.

In the case of smokers who purchase health insurance, the insurer assumes some of the possible risk that the smoker may have higher health costs than nonsmokers and this fact, if it is significant, will be reflected in the price of insurance premiums. These adjustments reflect the insurance carrier's judgment of the increased risk of health impairment for smokers. This cost is internalized by the private insurer, paid by the insuree, and no social cost exists.

In this discussion, we have attempted to clarify the distinction between private and social costs of smoking. As we have

seen, if smoking results in costs, these are costs which are borne by the individual, not by society.

It should also be mentioned here that these attempts to estimate the "social" costs of smoking not only confuse private and social costs, but also result in double-counting. When alleged private costs are already borne by the smoker, to also count these as "social" costs essentially counts these costs twice. Cost-benefit analyses of smoking often make this error and, as a result, drastically overstate costs.

VI. CONCLUSION

This report has attempted to quantify the major effects of imposing smoking restrictions in Government buildings, has discussed the economic impacts of such restrictions and has reviewed the issue of environmental tobacco smoke in terms of the need for government regulation.

The conclusion is that the proposed law could put serious fiscal pressure on the federal budget. The costs of imposing the law would be borne by the taxpayers. Other effects are inequitable: low- and moderate-income federal workers are the most likely group to be directly affected. At the same time, the benefits of the law are negligible: instances of smoking-related problems in workplaces are few and where they occur, voluntary efforts by managers and employees can resolve these problems without arbitrary government regulation.

The Congress must consider priorities in its deliberations on this issue. Given the current economic climate and the limited resources available to the public sectors to enforce these needs, such a law is not worth the consequences.

APPENDIX ATable 1Percentage Male Smokers by Detailed Occupational Category

<u>Category</u>	<u>Percentage Smokers</u>
Garage Laborers	58.5
Cooks (Not Private Household)	57.5
Maintenance Painters	56.3
Pressmen and Plateprinters	55.7
Auto Mechanics	54.6
Assemblers	52.7
Buyers, Store	52.1
Shipping and Receiving Clerks	50.0
Personnel, Labor Relations	36.9
Draftsmen	34.2
Accountants and Auditors	33.3
Architects	32.3
Lawyers	30.3
Compositors and Typesetters	29.3
Engineers, Aeronautical	26.2
Engineers, Electrical	20.3

Source: Sterling, T., and Weinkam, J., "Smoking Characteristics by Type of Employment," Journal of Occupational Medicine, 18 (11), 1976, pp. 743-754.

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Table 2Percentage Female Smokers by Detailed Occupation Category

<u>Category</u>	<u>Percentage Smokers</u>
Waitresses	49.6
Shipping and Receiving Clerks	48.5
Buyers, Store	46.5
Assemblers	43.6
Bookkeepers	38.6
Nurses, Professional	38.4
Laundry and Drycleaning Operatives	38.3
Secretaries	37.8
Accountants and Auditors	30.8
Stenographers	28.4
Payroll and Timekeeping Clerks	24.4
Technicians, Medical and Dental	23.6
Elementary School Teachers	19.4
Librarians	16.4

Source: See Table 1.

A-2

Table 3
Percentage of Smokers by Income*

<u>Age Group</u>	<u>Less than \$7,000</u>	<u>\$7,001 - \$14,999</u>	<u>\$15,000 - \$24,999</u>	<u>\$25,000-</u>
17-19	30.1%	27.9%	23.0%	17.2%
20-24	37.3	40.8	30.5	33.4
25-34	45.9	41.9	36.3	29.0
35-44	51.4	41.8	37.2	35.0
45-55	40.1	38.3	35.8	31.0
65-	17.4	18.0	15.6	18.2

* Unpublished data from the National Health Interview Survey, National Center for Health Statistics. Survey interviews took place during last six months of 1980.

Notes

1. Charles Helbing, "Ten Years of Short-Stay Hospital Utilization and Costs Under Medicare: 1967-1976," Health Care Financing Research Report, HCFA, U.S. Department of Health and Human Services, August 1980, p. 27.

2. U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1984, Washington, D.C.: USGPO, December 1983, p. 337. There is, of course, the problem that some of these workers will have private offices. There is no apparent way to adjust for this effect, nor is it clear how the proposed legislation would impact on a federal worker who smokes in a private office. Can he or she smoke, for example, when giving dictation or hosting a meeting? Moreover, not accounting for private offices is more than offset in our procedure by the exclusion of 453,000 federal blue-collar workers from our estimates. (see p. 9). Our cost estimates are thus very conservative.

3. Ibid. The average salary of professional and technical workers was arrived at by weighting the average salaries in the two occupational categories by the number employed.

4. U.S. General Services Administration, Office of the Administrator, Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1982, Washington, D.C.: General Services Administration, March 1983, p. 43.

5. U.S. General Services Administration, Office of the Administrator, Summary Report of Real Property Leased to the United States Throughout the World as of September 30, 1982, Washington, D.C.: General Services Administration, March 1983, p. 29.

6. Chicago Sun Times, July 13, 1980, p. 20. The two policemen involved in this incident were convicted of involuntary manslaughter and sentenced to prison. See Chicago Sun Times, February 4, 1982.

7. Remarks of Dr. Theodore Gill, Provost and Dean of Faculty, John Jay College of Criminal Justice, before the First Annual Conference of the National Minority Council on Criminal Justice, Washington, D.C., October 18, 1980.

8. Ibid.

9. The Kansas City Times, August 1, 1981, p. 34.

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Senator STEVENS. Our next witness is Dr. Marvin Kristein, from the departments of economics and community and preventive medicine of the State University of New York at Stony Brook, NY.

TESTIMONY OF MARVIN M. KRISTEIN, PH.D., DEPARTMENTS OF ECONOMICS AND COMMUNITY AND PREVENTIVE MEDICINE, STATE UNIVERSITY OF NEW YORK AT STONY BROOK, NY

Senator STEVENS. Give us time to change the road signs here, Doctor. I just want to demonstrate how little it costs to change signs. [Laughter.]

Mr. KRISTEIN. Thank you. Would you allow me a few minutes before I begin my testimony to thank Senator Gore for his statements which are very appropriate. I also wish to avoid, since I am an economist, when making my statement of giving the impression that economists differ greatly. Economists technically differ very little. If you find economists differing greatly, it is because they are working from different major premises. Thus, for example, if we make a mistake and apprentice someone to be a pirate instead of a pilot and he was born on February 29, in leap year, and he has to serve for 21 birthdays, he will be very old by the time he is released.

In the same way, if you make Gilbert and Sullivan major premises, the analysis may be very well done, but the results may be like a Gilbert and Sullivan joke.

It is not economics that we are differing on. The key element in the economic analyses of smoking usually sponsored by the tobacco industry involves viewing smoking merely as a freely chosen consumer activity which many people enjoy, like chewing gum or eating candy bars.

Following this error, one may speak of smokers' rights versus nonsmokers' rights, the utility value of smoking, the economic value of the tobacco industry, et cetera.

A proper conceptual view is to begin with the recognition that smoking has been the cause of a major epidemic; smoking is an addiction which unfortunates acquire at an early, impressionable age. Most smokers state that they wish they could stop. Almost half of the smokers in the United States have quit over the last 25 years.

Smoking greatly increases the risks of serious and costly consequences for the individual later in life. In addition, unlike gum chewing and candy bars, smoking also involves serious negative impacts on the health and functioning of nearby nonsmokers plus heavy causes to the society.

Society has a right and an obligation to restrict the individual's right to harm others and to impose avoidable costs on society by unwise and/or careless behavior.

We have laws about littering, pollution, suicide, reckless and dangerous driving, et cetera. Smoking involves all these aspects and more.

The rise of cigarette smoking in the United States since the first World War has produced a massive epidemic of illness, suffering and premature death involving many tens of billions of dollars in annual losses to our society and the U.S. Government.

Almost as many Americans are killed annually today due in large part to the rise in cigarette smoking as a habit as were killed in all of our wars in the 20th century.

The epidemiological evidence on the adverse effects of smoking on nonsmoking others nearby has led our Surgeon General to suggest that smoking parents may be guilty of child abuse. Given the weight of evidence and knowledge as to smoking available today, to assert one's right to smoke wherever and whenever one pleases is virtually equivalent to asserting one's right to be a drunken driver.

One should not be misled by medical research reports which say that the direct causal relationship between passive smoking and cancers and cardiovascular diseases in otherwise healthy persons needs further study. This does not say that passive smoking has no significant adverse health and functioning impacts on most nonsmokers. We know that passive smoking reduces breathing capacity, increases the rate of respiratory problems and diseases, reduces productivity, increases the nicotine of the bloodstream of nonsmokers, and makes many nonsmokers really sick. In addition, there have been awards to nonsmokers in business and in Government employment for injury due to passive smoking.

Now, Professor Tollison's remarks and analyses are based on the conceptual mistake of the rights of smokers plus a cost of implementation figure which is derived from a Gilbert and Sullivan-like fantasy, and the standard obstructionist claims of the Tobacco Institute.

The truth is: One, employers have the right to restrict smoking in the workplace; two, a properly devised program, seeking to avoid confrontation and appealing to patriotic good sense, involves little cost; three, we have numbers of examples of such programs from many American companies and State and local governments; four, after several years of relatively minor implementation costs, based on the evidence of existing problems, the U.S. Government will be enjoying a gain in real dollars of hundreds of millions of dollars a year due to S. 1440.

The tobacco industry always emphasizes the difficulties and complexities of implementation by taking an extreme adversary point of view. The truth is that the vast majority of smokers want to quit and do not voluntarily wish to harm nonsmokers. Since less than one-third of our adult population smokes, more and more smokers ask whether they may smoke in front of you. The law, as we have seen in many places, will be largely self-enforcing.

The premise of the law as to smoking being a form of pollution involving external diseconomies of substantial size is not at all faulty. Professor Tollison's comments in this area simply ignore the research on the costs to employees of employing smokers versus equivalent nonsmokers. More and more businesses are acting on forbidding smoking in the workplace, and the data on their savings is growing.

No one wishes to punish or penalize smokers; one simply wishes to restrain the extent to which they harm innocent others while, of course, doing great harm to themselves, by restricting a destructive and antisocial activity. This seeks to help smokers.

The productivity losses that Professor Tollison says will follow from S. 1440 are really, in part, the productivity losses presently

being suffered by the U.S. Government because it employs smokers. Smoking breaks are probably more frequent and longer at one's work station and are as nonproductive as they would be with limited smoking areas.

To these present losses, we must add the adverse effects on non-smokers—remember, there are two nonsmokers for every smoker—and the whole range of pollution, cleaning, fire-risk and accident costs. In fact, the tobacco industry's opposition to S. 1440 only makes sense if they fear that restricting smoking locations will reduce cigarette consumption and encourage smokers to quit.

Their very opposition supports the view that S. 1440 will lead to savings due to reduced smoking. Otherwise, it is hard to understand why they would care.

Properly restricting smoking in the workplace increases productivity by reducing the losses due to employing smokers. There is a substantial literature on this subject to which I have modestly contributed.

No-smoking signs cost little; putting them up takes a few minutes. Getting people to cooperate in helping the U.S. Government save money is a matter of good supervision and leadership. In other words, one takes a positive approach to this.

Restricting smoking in major public places is exactly where it is most important to emphasize that smoking is not only self-destructive, but antisocial. It does not discriminate against clerks and receptionists, implying a discrimination mostly against women. Those who are concerned with fairness in this regard—and it is the people who sympathize with the women employees particularly—should recall that 1985 marks the year in which female lung cancer mortality rates will surpass breast cancer mortality rates. Indeed, they "have come a long way, baby."

To use an assumed short-run perfect-marketing-functioning economic theory to assert that smokers bear the full costs or even the full private costs of their own behavior, especially in public employment, is misleading, and in this context, an example of the misuse of professional competence. Even private companies, which are rapidly adopting no smoking in the workplace programs, do not believe this theory relevant for the private sector.

Professor Tollison's model would perhaps be relevant for piece rate workers, paid daily, like longshoremen. It is surely not applicable for salaried employees.

We may turn to well-known published data to estimate the potential shorter run savings in a 1- to 3-year period, the savings likely to be enjoyed by the U.S. Government from implementation of S. 1440.

These involve only the areas of productivity, absenteeism, fire losses, accident-based losses and passive smoker costs. Notice I haven't said a word about health. I will use Professor Tollison's figures on Government employees and proportion of smokers.

My other cost estimates reflect barebones numbers limited to the costs directly borne by the employer. These are real numbers based on direct studies or GNP figures, and I used a labor cost of \$40 a day. This was done in a study directed toward employees. I prefer underestimates, anyhow.

Now, thus there are 356,989 smoking Government employees, or approximately one-third of its labor force. In mid-1985 dollars, based on work in my 1983 article, which is inducted in the appendix to my written statement, we estimate that the average smoking employee costs his employer \$550 per year in excess shorter run costs as compared to employing a similar nonsmoker.

Allow me to footnote this. Many smokers may not individually cost an employer that amount. But since these are real average numbers, for every smoker for whom this isn't applicable, there is some smoker to whom this is doubly applicable.

If one were to add on longer run—that is, health, premature disability, and premature death—costs, which would take 3 to 10 years to impact, the total smoker cost to the employer currently, on average in the country, would be at least \$1,100 a year per average smoker.

Now, let's assume we have only a 50-percent success rate. That would mean that the U.S. Government would save \$100 million a year in 1 to 3 years.

To conclude, S. 1440 recognizes the new research and realities regarding smoking today. The law is needed to protect smokers from harming themselves while working for the U.S. Government, to protect smokers from harming nonsmokers, and to protect the U.S. Government from smoking-caused losses.

It represents a laudable attempt on the part of the U.S. Government to protect and help its citizens deal with a terrible epidemic and to save money at the same time, which is nice.

Senator STEVENS. Thank you very much, Doctor. I am pleased to have your full review of Mr. Tollison's comments about cost. I note that you have written some articles yourself about how much business can expect to profit from smoking cessation and other articles such as those that you have provided us.

I wanted to thank you for "Wanted: Smoking Policies for the Work Place," the Wellness Report for November 1984.

These articles have been very helpful to us as we reviewed written material for this bill in preparation for this hearing. So we appreciate your taking the time to be with us and for your leadership in this area.

Mr. KRISTEIN. Thank you very much, sir.

Senator STEVENS. I particularly thank you for that economic analysis. I had just turned to my assistant, Ms. Arnold, and asked her if we could find someone who could provide an answer to Mr. Tollison's economic analysis for the record. Lo and behold, you had already done it.

I thank you very much for being so prompt in providing us those figures for the record. I appreciate your courtesy in coming down from New York.

Mr. KRISTEIN. Thank you, sir.

[Mr. Kristein's prepared statement, with attachments, follows:]

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WRITTEN TESTIMONY OF PROFESSOR MARVIN M. KRISTEIN, Ph.D.
DEPARTMENTS OF ECONOMICS AND COMMUNITY AND PREVENTIVE
MEDICINE

STATE UNIVERSITY OF NEW YORK AT STONY BROOK, NEW YORK
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL
SERVICES

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

HEARING ON S. 1440, TO RESTRICT SMOKING
TO DESIGNATED AREAS IN ALL U.S. GOVERNMENT BUILDINGS

SEPTEMBER 30, 1985

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Marvin M. Kristein is a professor of economics and community and preventive medicine at the State University of New York at Stony Brook. He is a consultant to the National Institutes of Health and to the National Institute of Mental Health on the evaluation of projects dealing especially with issues of health promotion and disease prevention. He frequently is reviewing grant proposals for the National Cancer Institute and the National Heart, Lung and Blood Institute. During 1980-81 he was visiting economist in the evaluation branch, office of the director, N.H.L.B.I. For almost ten years he has been a consultant in health economics to the American Health Foundation. He has published widely on the application of cost-effectiveness analyses for health care policy making, especially involving screening for various cancers, smoking, diagnostic testing, hypertension, research priorities, health promotion programs, and health care planning at the worksite and in the community. His article, "How Much Can Business Profit From Smoking Cessation" (Preventive Medicine, March, 1983) has enjoyed an extensive international circulation.

Professor Kristein received a B.S. degree from the City College of New York, An M.A. from Columbia University, and a Ph.D. from the New School for Social Research. He was a Fulbright scholar at the Netherlands Economic University in Rotterdam.

The following views reflect my many years of work on the economics of smoking, a topic for which I am internationally recognized as an authority. Please see the appendix attached for copies of my articles.

The basic outline of my comments involves three parts: first, a conceptual framework needed for a relevant economic analysis of the policy of prohibiting smoking in certain public places; second, a criticism of Dr. Tollison's remarks, based on a proper conceptual framework; and third, an estimate of the probable net savings likely to be enjoyed by the United States Government from a policy of restraining smoking in Government buildings.

The key error in economic analyses of smoking usually sponsored by the tobacco industry involves viewing smoking merely as a freely chosen consumer activity which many people enjoy, like chewing gum or eating candy bars. Following this error, one may speak of smokers' rights vs. non-smokers' rights, the utility value of smoking, the economic value of the tobacco industry, etc. A proper conceptual view is to begin with the recognition that smoking has been the cause of a major epidemic. Smoking is an addiction which unfortunates acquire at an early impressionable age. Most smokers state that they wish they could stop. Almost half of all smokers have quit in the past 20-25 years. Smoking greatly increases the risks of serious and costly consequences for the individual later in life. In addition, unlike gum chewing and candy bars smoking also involves serious negative impacts on the health and functioning of nearby non-smokers plus heavy costs to the society. Society has a right and an obligation to restrict the individual's right to harm others and to impose available costs on society by unwise and/or careless behavior. We have laws about littering, pollution, suicide, reckless and dangerous driving, etc. Smoking involves all these aspects and more.

The rise of cigarette smoking in the United States since the first World War has produced a massive epidemic of illness, suffering, and premature death, involving many tens of billions of dollars in annual losses to our society and to the United States

Government. Almost as many Americans are killed annually today due in large part to the rise of the cigarette smoking habit as were killed in all our wars in the 20th Century. The epidemiological evidence on the adverse effects of smoking on non-smoking others nearby has led our Surgeon General to suggest that smoking parents may be guilty of child abuse.¹ Given the weight of evidence and knowledge as to smoking available today, to assert one's right to smoke wherever and whenever one pleases is virtually equivalent to asserting one's right to be a drunken driver.

Professor Tollison's remarks and analyses are based on the conceptual mistake of the rights of smokers plus a one-half billion dollar annual implementation cost figure which is derived from fantasy and the standard obstructionist claims of the Tobacco Institute. The truth is that: (1) employers have the right to restrict smoking in their workplaces; (2) with a properly devised program (for which we have numbers of examples from American companies and state and local governments), avoidance of confrontation, and good sense, the United States Government in several years will be enjoying a gain in real dollars of hundreds of millions of dollars per year as a result of S.1440.

The tobacco industry always emphasizes the difficulties and complexities of implementation by taking an extreme adversary point of view. The truth is that the vast majority of smokers want to quit and do not voluntarily wish to harm non-smokers. Since less than one-third of our adult population smokes, more and more smokers ask whether they may smoke in front of you. The law will be largely self-enforcing, as has been seen at a number of companies.

¹ One should not be misled by medical research reports which say that the direct causal relationship between passive smoking and cancers and cardiovascular diseases in otherwise healthy persons needs further study. This does not say that passive smoking has no significant adverse health and functioning impacts on most non-smokers. However, we know that passive smoking reduces breathing capacity, increases the rate of respiratory problems and diseases, reduces productivity, and increases the nicotine content of the blood stream.

The premise of the law as to smoking being a form of pollution involving external diseconomies of substantial size is not at all faulty. Professor Tollison's comments in this area simply ignore the research on the costs to employers of employing smokers vs. equivalent non-smokers. More and more businesses are acting on forbidding smoking in the workplace and the data on their savings is growing. The recent rise of a non-smoking hotel has provided comparable dollar figures on maintenance and fire losses.

No one wishes to punish or penalize smokers; one simply wishes to restrain the extent to which they harm innocent others (while, of course, doing great harm to themselves) by restricting a destructive and anti-social activity. This seeks to help smokers.

The productivity losses that Professor Tollison says will follow from S.1440 are really, in part, the productivity losses presently being suffered by the United States Government because it employs smokers. Smoking breaks are probably more frequent and longer at one's work station and are as non-productive as they would be with limited smoking areas. To these losses, we must add the adverse effects on non-smokers (two non-smokers to every smoker) and the whole range of pollution, cleaning, and fire-risk and accident costs. In fact, the tobacco industry's opposition to S.1440 only makes sense if they fear that restricting smoking locations will reduce cigarette consumption and encourage smokers to quit. Their very opposition supports the view that S.1440 will lead to savings due to reduced smoking.

Properly restricting smoking in the workplace increases productivity by reducing losses due to smokers. (Please see articles in appendix) No smoking signs cost little; putting them up takes a few minutes. Getting people to cooperate in helping the United States Government save money is a matter of good supervision and leadership. Restricting smoking in major public places is exactly where it is most important to emphasize that smoking is not only self-destructive but anti-social. It does not discriminate against clerks and receptionists (implying discrimination mostly against

women). Those who are concerned with fairness in this regard should recall that 1985 marks the year in which female lung cancer mortality rates surpass breast cancer mortality rates.

To use an assumed short run perfect-market-functioning economic theory to assert that smokers bear the full costs of their own behavior, especially in public employment, is misleading and, in this context, an example of the misuse of professional competence. Even private companies, which are rapidly adopting no-smoking in the workplace programs, do not believe this theory relevant for the private sector.

We may turn to well-known published data to estimate the potential shorter-run (one to three year period) savings likely to be enjoyed by the United States Government from the implementation of S.1440. These involve only the areas of productivity, absenteeism, fire losses, accident-based losses, and passive smoker costs. I will use Professor Tollison's figures on government employees and proportion of smokers. My other cost estimates reflect bare-bones numbers, limited to the costs directly borne by the employer, and appropriate for the poorest business. I prefer underestimates. Thus, Professor Tollison says that there are 356,989 smoking government employees, or approximately one-third of its labor force. In mid-1985 dollars, based on my 1983 article, we estimate that the average smoking employee costs his employer \$550. per year in excess shorter-run costs as compared to employing a similar non-smoker. If one were to add longer-run (largely health and premature disability and premature death) costs, which would take three to ten years to impact, the total smoker cost to the employer would be at least \$1,100 per year per average smoker.

Assuming a 100% success, in three years, the United States Government would be enjoying an annual savings of almost \$200 millions. Remember, these are understated figures. Even a 50% compliance would save \$100 millions a year.

To conclude. S.1440 recognizes the new research and realities regarding smoking today. It represents a laudable attempt on the part of the United States Government to protect and help its citizens deal with a terrible epidemic and to save money at the same time.

How Much Can Business Expect to Profit from Smoking Cessation?^{1,2}

MARVIN M. KRISTEIN*

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The data reviewed in this article, drawn from well-known, published sources, offer an estimate of the annual costs of smoking to the average employer. These costs range from \$336 to \$601 in January 1980 dollars per average smoking employee. The analysis is largely based on aggregate epidemiological data and, in general, the emphasis is on the underestimating of the costs to business. It reports "averages" true for large populations and, therefore, is not individually predictive. The cost centers dealt with are insurance, medical, and others such as absenteeism, productivity, involuntary smoking, and occupational health risk. Included is a discussion of employer-sponsored smoking cessation programs and the benefits therefrom.

INTRODUCTION

The Surgeon General of the United States has stated: "cigarette smoking is the single most important preventable environmental factor contributing to illness, disability, and death in the United States" (78). In the multivariate analysis of the risk for coronary heart disease, based on Framingham data, cigarettes smoked is a close second to the number one risk factor (after age), cholesterol level, for men.³ The connection between smoking and respiratory cancers—the only major type of cancer registering an increasing mortality rate in recent years—is well established (16, 78, 88, 92). How much is this well-known health problem costing business and can some of these costs be reduced in a cost-effective manner?

A 1979 survey of 3,000 companies by the National Interagency Council on Smoking and Health reported that less than 1% had calculated their costs due to smoking, 15% had health promotion programs involving smoking, and one-third wished to develop or expand programs for employees. Two-thirds of the companies had smoking restrictions in special "blue collar" areas; three-quarters or more had no restrictions on smoking in general (55). This article reviews the costs of smoking, primarily based on data from well-known, published sources, in order to aid policy makers in developing a rational cost-effective policy in this area. The analysis is largely based on aggregate epidemiological data; it reports "averages" true for large populations; it is not individually predictive. The numbers are "ballpark" figures, not seat and aisle numbers. The cost centers dealt with are

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¹ Supported in part by NCHSR Grant 1R03HS03342-01 and USDHEW Grant 282-78-0168BAD to the American Health Foundation, New York, NY.

² Based on a talk prepared for the National Interagency Council on Smoking and Health, January 1981, New York.

³ The Framingham linear discriminant function coefficients (standard units) for men of all ages are: for age, 0.59; for cholesterol, 0.44; for cigarette smoking, 0.42; for systolic blood pressure, 0.33 (75).

insurance (medical and other), absenteeism, productivity, involuntary smoking, and occupational health risk. We lack meaningful "case-controlled" company comparisons of experience with smoking employees vs nonsmoking employees vs ex-smokers and the impact on company costs. Therefore, we must work from aggregate national epidemiological data on illness and other costs associated with smoking and attempt to apportion a realistic share to smoking employees. In general, the emphasis is on *underestimating* the costs to business.

A summary of the various costs of smoking calculations, performed in this manner, indicates that the average one-pack-plus-per-day smoker may, over his or her lifetime, cost his or her employer between \$336 and \$601 per year, in January 1980 dollars, in extra expenses as compared with an otherwise equivalent nonsmoking employee. Adding about 40% would bring the medical-care cost figures up to January 1983 dollars; adding about 25% will adjust the other dollar figures similarly. Present studies suggest that more than half of these costs may, at least in part, be recaptured in the medium to short run by smoking cessation programs at the workplace. One particularly striking result of the analysis which follows is that the annual nonhealth medical-care costs may be greater than the health-care costs. We also deal with the issue of substituting one type of cost for another, i.e., the possibility that increasing pension fund costs may overwhelm the gains in terms of savings on medical care spending and higher gross national product (GNP) due to lower morbidity and mortality. Table 1 summarizes the current total health-care costs and indirect costs in lost GNP (due to morbidity and premature mortality) of smoking to the society as a whole.

METHODS

To attempt a scientifically based answer to the question of how much employee smoking is actually costing the typical American business and by how much this cost can be reduced would require studies and data we do not now—and most likely will never—possess. Thus, it would be necessary to have data reflecting at least a 20-year follow-up of at least one case-controlled study comparing a company with several thousand employees that had pursued a smoking cessation effort (perhaps as part of a broader health-promotion program) with a similar company that has not pursued such a program. One would compare measures of spending on health insurance and other insurance coverages (including life, fire, and accident), absenteeism, productivity, occupational health, etc., and the costs of the program. Thereby, one could estimate over time the sum saved (or not saved) by the company that had reduced the amount of employee smoking. A 20-year follow-up would be essential for a full expression of the range of diseases related to smoking, given the dose-response literature, as is the requirement for several thousand employees for reasonable "effect size" given the incidence rates of the diseases involved and the differentials in rates likely to be found. Nothing in the literature even approaches such data. There have been aggregative and special epidemiological studies and estimates of overall extra-illness rates of smokers vs nonsmokers and vs ex-smokers, however. In addition, there is extensive literature on the relationship between chronic diseases and smoking based on population and laboratory epidemiology. Also, there are studies, generally with serious re-

TABLE 1
TOTAL ECONOMIC COSTS OF SMOKING IN THE UNITED STATES PER YEAR IN JANUARY 1980
DOLLARS* (MILLIONS)

	Direct costs ^b	Indirect costs ^c	Total
Neoplasms	\$1,453	\$6,310	\$7,763
Circulatory	5,120	18,230	23,350
Respiratory	4,450	12,025	16,475
Total	11,023	36,565	47,588
Per adult smoker	204.00	677.00	811.00
Per cigarette sold	0.02	0.06	0.08
Per package sold	0.36	1.19	1.56

* Based on Luce and Schweitzer, March 9, 1978 (52) and assumption of 54 million adult smokers and 612 billion cigarettes sold per year.

^b Medical care spending on diseases related to smoking.

^c Lost earnings due to morbidity and premature mortality (discounted at 4%).

search limitations, of various populations dealing with measures of productivity, absenteeism, involuntary smoking, and smoking and occupational health (76, 78).

This article attempts to mine available data to obtain the information sought by starting with aggregative epidemiological data, largely for the United States as a whole, and reducing it to per capita data by dividing by the size of the relevant populations. Estimates of the excess chronic and acute illnesses associated with smoking, i.e., cancer, circulatory disease, and respiratory disease, are taken at the lowest range suggested in the literature in order to underestimate the impacts of smoking. These percentages of excess illness are then used to calculate the costs of smoking by multiplying them by the generally accepted estimated dollar costs of the relevant illnesses. Old data is inflated by relevant price indices to obtain up-to-date dollar figures. Obviously, using multiplied estimates as inputs provides even less accurate estimates as output. However, every effort has been made to emphasize the lowest range of estimates in the sensitivity analysis. Details of the calculations are provided in special references to Table 2. Thus, the upper endpoint of the final estimate, i.e., that the average smoker costs his or her employer about \$600 per year in various forms, is an underestimate given the basis from which it is derived. The lower endpoint, about \$340 per average smoker per year, is an almost arbitrary reduction of the upper figure by about 50%. This is a sensitivity analysis where the medical care portion is based on data from an early draft of a paper on the health care costs of smoking reflecting the experience of a health maintenance organization (HMO) population (79). When the results were generalized, they provided an estimate equal to about half that of the Luce and Schweitzer (52) data. The workers' compensation, absenteeism, and productivity low estimates are arbitrary 50% reductions as well, rounded to the nearest lowest \$5 figure.

Some of the cost of smoking estimates are based on statistical associations of the variable concerned and smoking; some are based on laboratory epidemiology and controlled population studies. All who have studied statistics know that correlation is not causation, but correlations supported by clinical, experimental, and laboratory data and tested epidemiological theory come as close to cause and

TABLE 2
ANNUAL COST OF SMOKING PER "AVERAGE" SMOKER (IN JANUARY 1980 DOLLARS)

	Low	High	Assigned to business
Health ^a	\$105	\$204	\$75-150**
Fire ^b	5	10	5-10*
Worker's compensation ^c	17	34	17-34*
Life insurance ^d	20	33	20-33**
Absenteeism ^e	40	80	40-80*
Productivity ^f	80	166	80-166*
Involuntary (1.5%)	53	105	27-56*
Occupational health (recent brown lung award) ^g			72-72**
Short term (*)			169-346*
Long term (**)			167-255**
Total			336-601**

(a) The \$204 figure for excess health insurance costs per smoker per year is obtained by dividing the \$11 billion estimate of excess health-care costs (\$2) due to smoking by the 54 million smokers over age 17. This is the first gross underestimate since these excess health-care costs are largely generated by the population over 40 years of age. Also, the heart disease health risk of smoking is greatly reduced after the age of 65. The \$105 figure is obtained similarly, using the \$4.5 billion cost estimate, adjusted by assuming a 20-year, rather than 7-year follow-up, which raises the \$4.5 billion to \$5.67 billion (79). We have used as an adjustment factor the 26% higher usage of short-term quitters as compared with long-term quitters reported in the Oregon study. This reflects the fuller impact of malignant neoplasms and respiratory diseases which is missing in the Oregon HMO study. Only three-fourths of these costs are assigned to business, following the discussion of the average age of incidence of the diseases involved, even though many businesses (especially major corporations) continue to provide health-care insurance for their retirees. This three-fourths allocation of health-care costs is rounded to the lowest multiple of 5 in order to indicate the ballpark nature of these numbers.

(b) The data on fire losses are derived from the National Fire Protection Association's bimonthly publication, *Fire Journal*, from the "Insurance Information Institute's Annual Fact Book," and from the Statistical Abstract of the United States. Total fire losses in 1980 were \$5.6 billion, of which residential (including hotels and motels) were \$2.8 billion. Therefore, business and government fire losses were \$2.8 billion. Smoking is estimated to account for 7.3 to 11% of fire losses. Taking the lowest figure for smoking-caused fire losses and multiplying by the \$2.8 billion of business and government losses due to smoking, gives us a figure of \$204 million. Since there are approximately 40 million smokers employed, dividing \$204 by 40 million gives us an annual employer fire loss per smoker of \$5. The \$10 upper range figure reflects the 11% rate of fire losses due to smoking, adjusted for the fact that many of the outstandingly expensive business fire losses have been due to smoking and related careless employee behavior in disposing of cigarettes (e.g., the Galveston-Texas City fire April, 1947) (22).

(c) Worker's compensation costs are estimated based on 1977 total worker's compensation costs of \$9.4 billion. Since there are 40 million employed smokers out of a labor force of 100 million, and research indicates that, on average, smokers have two times the accident rate of nonsmokers (56, 78, 94), \$5.4 billion of these costs (about 60%) are assigned to smokers. This gives us an annual worker's compensation cost of \$135 per smoker and \$67 per nonsmoker, or a differential of \$68 per smoker. Assuming that only half of this differential is due to smoking per se, as compared with other nonprudent behavior patterns gives us the high figure of \$34 per smoker per year. The low range figure is based on an analogy with health care costs, where the low range estimate is approximately one-half of the high range estimate.

(d) The life insurance plus early disability and early retirement benefits costs reflect the State Mutual Life Insurance Company's lower premium for nonsmokers of \$1.19 per \$1,000 of insurance (14, 20). This differential is reduced to one dollar, and it is assumed that early disability retirement costs are at least equal to 1 year's salary worth of life insurance, which is an underestimate.

TABLE 2—Continued

The lower range is based on an annual salary of \$10,000, the upper range on an annual salary of \$15,000.

(e) Absenteeism costs are based on the literature discussed in the report of the U.S. Surgeon General, *Smoking and Health*, January 1979, Chap. 3 (71, 78). The estimate in the literature is that 81 million working days are lost per year due to smoking. When divided by 40 million working smokers, this reduces to 2 days per smoker per year, valued at \$40 per day giving us the \$80 high range. The low range of \$40 is not only one-half the high range but also reflects the differential reduction of approximately one day per ex-smoker found in certain work site health-promotion efforts (3, 5, 12, 41, 85).

(f) As indicated in the text, estimate of the productivity cost of smoking is based on assuming that 1 min per working hour, or 8 min a day, are wasted by smoking rituals, etc. Actual employer estimates are closer to 30 min per day (80, 81). The low range figure for productivity losses due to smoking are arbitrarily one-half of the high estimate, rounded to the nearest lower \$5.

(g) The loss due to impacts on involuntary smokers is calculated by taking one-fifth of the costs assigned to smokers, omitting fire losses. This is based on the White and Froeb finding (83) that involuntary smokers may suffer breathing capacity impairment equal to that for light smokers (one to ten cigarettes per day) and that the cancer risk of light smokers is one-fifth that of smokers of one pack plus per day (92). We believe that using relative cancer risk as an estimate for general impairment is an underestimate, since cancer is a relatively rare disease involving a long-term relationship with smoking, as compared with cardiovascular diseases and respiratory diseases on which the impact of smoking is greater and more immediate. Further, we assign only the short-term risks to businesses, i.e., one-fifth of losses due to worker's compensation, absenteeism, and productivity, or low range, \$27; high range, \$56.

(h) The \$72 figure for occupational health is based on the October 1981 award by the Supreme Court of North Carolina in a brown lung case of \$3,000 per year for 6 years, or \$18,000 to an early disability-retired employee. If one estimates the incidence of COLD or brown lung disease to be similar to lung cancer in smoking uranium miners and asbestos workers, then we are dealing with a potential annual rate of about 40 per 10,000 per year (78). This probably involves an incubation period of 20 years of exposure. However, for an old company with a long-time smoking employee population, the 0.004 annual incidence rate may be experienced every year for the foreseeable future. One might, therefore, view the occupational health cost as a short-term cost, but since it is health based, here it is classified as a long-term cost. If we multiply the \$18,000 award by the rate of 40 per 10,000 (0.004) we obtain a potential annual cost per smoking employee of \$72. According to Heyden and Pratt (32), elimination of smoking at the work site would virtually eliminate cotton dust-related respiratory disease. Thus, in this case, one may assign the entire occupational health risk award to smoking in terms of economic analysis, even though the court viewed this portion as occupational risk.

effect as can be expected at this time. For example, we cannot state with certainty that absenteeism will decline if employees stop smoking, but insofar as absenteeism reflects illnesses (largely acute respiratory, in the short run) related to smoking, absenteeism should decline with a decline in smoking. In fact, this outcome has been observed in several health-promotion efforts by various types of employers (3, 5, 12, 41, 85).⁴

For cost centers involving matters other than cost of illness, the approach of applying estimates of the net effect of smoking on the cost center and to value the

⁴ The health-promotion efforts of various employers referred to in this context include: (a) employees in the New York State Department of Education, (b) an American Health Foundation program carried out for employees of the New York City Fashion Office of Sears, Roebuck & Company, (c) American Telephone and Telegraph Company, (d) New York Telephone Company, (e) Speedcall Corporation.

difference by a (generally low) relevant current price has been used. For example, fire losses per smoking worker are estimated by taking data on nonresidential fire losses from the "Insurance Information Institute Fact Book." An estimate of the percentage of fires due to smoking is applied to this figure, which is then divided by an estimate of the number of smoking employees to obtain the estimated cost of \$5 per smoking employee. Estimates of other types of insurance costs (for example, life insurance) are based on the higher age-adjusted mortality rates for smokers vs nonsmokers that have been observed. The differences between insurance premiums charged, reflecting such mortality rate differences, are compared.

Productivity-loss estimates reflect a consideration of a range of estimates from time and motion testimony to the U.S. Congress involving a service industry (banking) (65) to employer comments in the construction industry (80); the lowest level of estimates is emphasized. While such estimates are not scientifically elegant, we know that the smoking rituals take time and that there are added cleaning and ventilation costs. In addition, there are more carefully developed studies of the effects of smoking on the mental and physical capacity of smokers. Again, our estimates try to reflect the minimal level of such costs.

THE COST BY COST CENTER

The usual procedure in cost accounting is to classify costs in terms of the administrative units, type of activity areas, or departments which give rise to the costs being studied. These are called cost centers. Since this article seeks to be as generalized as possible, the approach followed is classification by type of activity. Thus, the costs associated with the areas of insurance costs (major relevant types), absenteeism, productivity, involuntary smoking (effect on nonsmoking others), and occupational health are studied. The implications of the data for company policy are explored. In addition, examples of cost effectiveness of company programs are discussed. Also, a company experience with work site no-smoking policies is reviewed (Appendix 1) and a caveat offered (Appendix 2). The evidence suggests that an aggressive antismoking policy is a viable company policy that may be highly cost effective.

1. The Insurance Costs of Smoking

A company's insurance expenses depend on the coverage it offers its employees. The vast majority of companies offer health-care insurance, largely paid for by the company, for employees and their families. Most companies also have fire, worker's compensation, and accident coverage for their employees. There is well-known, reviewed literature dealing with the excess health-care insurance costs associated with smokers. The dollar cost figures used here are based on the research of Luce and Schweitzer 1978 (52), which is, in turn, based on a 1976 study by Boden (11). These calculations rest on the judgments of medical experts as to the percentages of certain major diseases which are associated with and related to smoking (6, 44, 45): neoplasms and circulatory (cardiovascular) system and respiratory system diseases. The percentages employed are, respectively, 20, 25, and 40% and some recent research indicates that they may be under-

estimates (76).³ These percentages are applied to the familiar Cooper and Rice calculations of the economic (dollar) costs of these diseases (7, 18) and are then adjusted for inflation. The total figure for the annual excess-illness cost (i.e., direct excess medical-care spending due to smoking (in January 1980 dollars) would be over \$11 billion.

The author has seen an early draft of a more recent attempt at a national estimate of the medical care cost of smoking based on the experience of an Oregon HMO sample of some 2,500 persons (79) that arrives at an upper-range figure of \$4.5 billion in 1980 dollars.⁴ The study covers a relatively small sample for only 7 years. In fact, the short-run quitters have a 26% excess usage as compared with quitters of over 4 years standing. One may use this figure to adjust the upper range estimate partially to reflect the smoker/ex-smoker difference which would be found in a longer follow-up (e.g., 20 years, which is the lead time for the relationship of respiratory cancers to smoking). This raises the Oregon HMO estimate to 5.7 billion. Seven years is barely enough time to establish a relevant minimum rate for heart diseases and respiratory diseases for the cohort, 82% of whom were under 65. Also, the ex-smoker group appeared to consist mostly of persons who quit because of illness, largely heart disease and respiratory disease.

How many of these costs may be assigned to the employed population? How many of that population's direct costs are borne by company-paid health insurance?

Dr. Jeffrey Harris has estimated that there were 54 million smokers over the age of 17 in 1978 (18). Thus, dividing aggregate costs by population, one may say that the average adult smoker, over his or her lifetime, accounts for \$105-204 of the annual excess medical-care costs as compared with a nonsmoker. The indirect costs of morbidity and premature mortality, i.e., some 350,000 premature deaths (78), which involve considerable personal losses to the individual, his or her family, and the society as a whole, are separate from the direct costs and average over two times the dollar cost of direct medical-care costs (7,18). They are excluded from the discussion at this point, since they are picked up in later sections of the paper on absenteeism, etc., and do not represent direct health-care costs to the employer.

In the author's 1977 paper (48), he attempted an alternative type of cost calculation, differing from the Luce and Schweitzer approach to the data. Rather, it was

³ The American Cancer Society estimates that smoking is associated with 31% of the incidence and 41% of the deaths due to neoplasms (1). Also, 70% of the deaths due to chronic obstructive pulmonary disease are related to smoking (76-78). Cardiovascular diseases (CVD) in the 40- to 60-year-old population, especially sudden-death heart attacks, are heavily associated with smoking. Statistical studies have found smoking to be the variable that "explains" up to 50% of the variation in CVD mortality over time (47). The upper range of smoking's impact on major diseases is probably 35% for malignant neoplasms, 35% for cardiovascular diseases, 65% for respiratory diseases.

⁴ Vogt and Schweitzer found a 20% excess medical care usage by "their" continuing smokers vs ex-smokers in the Oregon HMO (79). This lower rate may represent a corrected estimate of the 50% estimate usually quoted, or it may reflect the short follow-up period of only 7 years and the fact that the ex-smoker group was heavily weighted with persons who quit on their doctors' advice, reflecting the presence of serious disease.

based on total U.S. health-care spending figures and employed the well-established point in the literature that adult heavy smokers, especially men, make greater use of the health-care system, especially hospital stays, than do nonsmokers. Smokers use at least 50% (78) more health care (48), reflecting their increased prevalence rates of chronic and acute conditions and disability days than do nonsmokers. The results of this calculation produced figures for national health care costs of smoking, which were strikingly similar to those obtained by Luce and Schweitzer's 1978 study (52).

Obviously, the health-care expenses of smokers, individually, are concentrated at higher ages; for example the average age for lung cancer is about 60 in the United States (92). This is derived, as one would expect, from the studies of the dose-response formulas relating the relative risk of lung cancer to the average daily tar intake and duration of smoking (53, 87, 89). The average age of first heart attack is much lower and falling; it is probably about 55. Therefore, only a fraction of health-care costs due to smoking should be allocated to employers. This is conservatively estimated at three-fourths of the national figure, since 87% of the medical costs associated with smoking involve circulatory and respiratory diseases, which are significant at earlier ages than cancers.

The Luce and Schweitzer article (52) also contains estimates of fire accident costs due to smoking, which amount to \$10 per smoker per year, including residential fires. As estimated herein, nonresidential fire losses are \$5 per smoking employee per year (see footnotes to Table 2 for details of the calculations). A \$10 fire-loss figure is presented as an upper limit since there is reason to believe that the proportion of nonresidential fires due to smoking is greatly underestimated and many of the historically most disastrous industrial fires have been caused by smoking (15, 22).

The author estimates that other accident costs and the smokers' share of the annual worker's compensation costs add an additional \$17 to \$34 per year per working smoker to the insurance cost category. These calculations are based on studies by Naus *et al.* (56) and Yusta and De Guevara (78, 94), which find that smokers have two times the accident rate of nonsmokers, due in part to loss of attention, smoking hand being occupied, eye irritation, and cough. These higher accident rates are applied to the total cost of worker's compensation to obtain the extra cost due to smoking. (See footnotes to Table 2 for details of the calculations.)

Many companies pay for life insurance coverage for their employees and have extensive disability and early retirement provisions. Many employers offer group term life insurance as a standard benefit worth at least 1 year's salary. Such benefits may add an additional \$20 to \$33 per year to the smoking bill.⁷ These

⁷ The California GASP Newsletter for January 1980 (14) reports: State Mutual Life Assurance Company of America has lowered premiums per \$1,000 of life insurance coverage from \$3.46 to \$2.67 for nonsmokers, reflecting the company's experience that, between the 6th and 10th years of coverage for persons aged 30 to 49, the smoker-nonsmoker death ratio for all causes was 4.3. Also, a typical 32-year-old male smoker was estimated to have a life expectancy averaging 40 years as compared to 47 years for a nonsmoker.

estimates are based on data as to differential mortality of smokers vs nonsmokers reported by the State Mutual Life Assurance Company of America and data in the author's 1977 paper (20, 48, 57). (See footnotes to Table 2 for details of the calculations.)

These company costs really reflect the extra cost to the business community as a whole. If a company is experience rated or self-insured (usually a very large company) then its premiums should reflect the high cost due to smoking, and it might look forward to directly pocketing those savings by smoking cessation. Smaller companies are generally community rated. Their premiums reflect the extra costs to its local insurance area in the society as a whole due to smoking. Unless all such employers and employees cooperate to reduce smoking, a single small company may not succeed in reducing its premium costs even if all its own employees stop smoking and its medical-care spending declines significantly.

2. Absenteeism

The literature on the absenteeism record of the average smoker vs the average nonsmoking employee is extensive; there are published studies of experience in the United States and other countries covering a variety of occupations, ranging from Connecticut telephone operators to members of the post-World War II German Army (36, 71, 78, 84). Smokers have 33 to 45% excess absenteeism as compared with nonsmokers. These figures do not reflect case-controlled studies nor do repeated measurements of high R^2 correlation coefficients represent causation. In fact, one may argue that higher rates of absenteeism and smoking both relate to and reflect other factors. However, studies of work site health-promotion programs, including smoking cessation efforts at a number of different companies, find substantially reduced absenteeism rates in the short run after a year or two for participant populations vs historical and current controls.⁸ Based on the 1974 Health Interview Survey of the National Center for Health Statistics it was estimated that the excess absenteeism associated with smoking in the United States amounted to 81 million lost work days per year, or about 2 days per smoker (78). Absenteeism among smokers is particularly concentrated in the 17-44 age group. If valued at \$40 per day, that means that the average smoker may be costing his or her employer as much as \$80 per year in excess absenteeism. To deal with the issue that all smokers' excess absenteeism may not be due entirely to smoking, and that ex-smokers may never attain the levels of nonsmokers, we offer a lower-range absenteeism cost figure of \$40 per year per smoker. These calculations do not include the costs of temporary replacements and the effects of absenteeism on the productivity and morale of co-workers.

⁸ An internal study by the nursing service of Southern New England Bell Telephone found that smokers' absence due to colds alone cost an average of \$50 per smoker per year more than nonsmokers' absence due to colds. (Reported at the Connecticut Lung Association Conference, November 13, 1980, New Haven, Connecticut.)

3. Productivity

In addition to the impact on insurance costs and absenteeism, there are direct productivity losses due to such factors as time lost to smoking rituals, extra clean-up costs, extra damage to equipment, furniture, and fixtures,⁹ extra inefficiency and errors, discussed in the literature as due to the effects of higher carbon monoxide levels in smokers, eye irritation, and measured lower attentiveness, lower cognitive and lower exercise capacity functioning. These costs have been estimated in 1969 Congressional testimony and have also been updated over time (9, 65, 86). A reasonable *underestimate* of such productivity losses per year per average smoker for the average business would be \$166 (in January 1980 dollars).¹⁰ This is based on a minimal estimate of a loss of 1 min per working hour, or 8 min per day, for a 250-day working year, at \$40 per day. Again, to allow for the possibility that exsmokers may not attain the performance levels of nonsmokers we offer a lower range productivity estimate of \$80 per year per smoker.

4. Involuntary Smoking

The effects of smoking on nearby nonsmokers have been studied. For example, the children of smokers have higher rates of respiratory diseases, adjusted for relevant complicating factors (27, 72, 78). The nonsmoking wives of smokers have been found to have higher rates of respiratory cancer than would be expected among nonsmokers (31, 74, 77). There has been much controversy on the topic of induced cancer in involuntary smokers (23, 49, 58).¹¹ Therefore, our cost estimates emphasize impact on acute illness and work capacity rather than on cancer. In addition to the considerable physical and psychological irritation that nonsmokers suffer at the hands of smokers, nonsmokers' work performance ability is reduced by the effects of nearby smoking. White and Froeb (50, 83) report that the damage to breathing capacity as a result of involuntary smoking is equal to that of light smoking (i.e., one to ten cigarettes per day). It is reported that there is a doubling of the rate of functionally impairing asthma for children ages <1-17 with smoking mothers, statistically significant at the 0.01 level, as compared with nonsmoking mothers' children (27). Also, disability days were 30% higher, even when controlling for the asthma and bronchitis. If one applies the White and Froeb

⁹ Bruce D. Nelson, Senior Engineer of the Energy Planning and Development Office of the State of Minnesota has estimated that the extra ventilation requirements, based on recommendations of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), due to smoking at the workplace would add about \$40 per year per smoker to the energy costs of operating a plant (4). "With the present recommendations [of ASHRAE], smokers would account for 87% of the demand for ventilation, even though they constitute less than one-third of the adult population" (13). This figure should be added to the productivity estimate given in the text, since the latter is simply based on "time wasted" and related aspects of smoking rituals.

¹⁰ Employers with nonsmoking areas at the work site reported that they provided two or more daily smoking breaks, averaging 15 min. for workers in these areas (9).

¹¹ The Japanese study of the lung cancer experience of nonsmoking wives of smokers is supported by a Greek study (31, 74). The latter finds a higher relative risk for lung cancer among the nonsmoking wives of smokers in Greece, dose-response related to the amount of smoking by the husband, similar to the findings for Japan. Passive smoking Greek women had only a slightly lower risk than actively smoking Greek women. A U.S. study failed to find this relationship (23). The statistical validity of the Japanese study has also been questioned (49). A recent meeting at the National Cancer Institute on this topic ended inconclusively (58).

finding to the calculations in Wynder and Stellman (92), using the relative lung cancer risk for light smokers as an index of relative general risk, one may estimate that the minimum overall health status and performance damage to involuntary smokers as equal to one-fifth of that for smokers of one pack plus per day. Thus, the involuntary smoker is seen as adding an annual cost of \$53 to \$105 per involuntary smoking employee to insurance and other costs. The short-run nonhealth, non-life insurance involuntary smoker costs range from \$27 to \$56. Only the short-run cost figures are used herein, i.e., absenteeism, accident, and productivity impacts, as possible costs to the employer. Since these cost figures are expressed in terms of "per smoking employee," this paper implicitly assumes one involuntary smoker for each smoker; this is probably an underestimate by at least a factor of 2.

5. Occupational Health

Occupational health risks are real for workers exposed to various agents under given work conditions (3, 37, 59, 78, 82). These risks have been, in part, established for certain working conditions by comparing relevant, long- and short-term disease rates for such workers with the disease rates for otherwise similar persons not so occupied in the general population. In addition, some diseases, such as mesothelioma, appear to be related to exposure to asbestos and independent of smoking habits. Also, chloromethyl ether exposure and lung cancer incidence (small cell, early age) appears to be independent of smoking; but earliness of cough appears to be smoking-related even in this exposure.

However, these situations should not lead to a misplaced emphasis. For a very large number of important occupational health risk exposures, smoking is a very important factor. Thus (a) smoking may be a vector for workplace toxic agents; (b) a number of chemical agents are made more harmful by smoking (e.g., polymer-fume fever); (c) certain toxic agents in smoke combine with workplace agents so as to increase exposure (e.g., cyanide, carbon monoxide, acetone, arsenic, lead, aldehydes, ketones, methylene chloride, etc.); (d) smoking may add significantly to the effects of occupational exposures such as in the case of coal dust, cotton dust, beta radiation, chlorine, etc. (8, 32, 34, 86); (e) smoking may act synergistically to multiply the influence of occupational exposure as in asbestos, rubber, and gold and uranium mining (78). The latter provides a good example of the relative importance of smoking in the case of occupational exposure.

Uranium mining involves a health risk for lung (and other) cancers. That is, nonsmoking uranium miners have a 7 per 10,000 risk, annually, of contracting lung cancer as compared with a 1 per 10,000 risk for the nonsmoking-non-uranium mining population. However, smoking uranium miners have a 42 per 10,000 risk for lung cancer or 6 times that for nonsmoking miners and over 40 times that for nonsmoking-nonminers (78).

The Hammond *et al.* study of mortality ratios from lung cancer for workers exposed to asbestos dust offers another striking example. If the mortality ratio for nonsmoking-non-asbestos-exposed persons is set equal to 1, then the ratio for nonsmoking-asbestos-exposed workers is found to be 5. For smoking-non-asbestos-exposed persons the ratio is 11; for smoking-asbestos-exposed workers

the ratio is 53 (29). In terms of risk for lung cancer, it is more than twice as risky to smoke as it is to be a worker exposed to asbestos dust. It would be useful if the public sense of relative risk reflected this fact.

Another example concerns the rate of chronic bronchitis among South African gold miners (70). Smoking gold miners have a chronic bronchitis rate of 50% as compared with 8% for nonsmoking gold miners and 28% for smoking nonminers in the general population. Nonsmoking-non-gold mining persons had rates of chronic bronchitis significantly less than 8%.

These data raise several important policy issues and questions for occupational health policy. First, it may be possible that a relatively small expenditure on smoking cessation efforts at the work site, including work site prohibitions along with guiding assistance for quitting could greatly reduce the total burden of occupational health risk. This is true even after the fact of exposure. A 10-year follow-up of over 2,000 asbestos workers who had quit smoking found a significantly lower rate of lung cancer mortality as compared with those who had continued to smoke (67). As recent cases in regard to black and brown lung diseases have demonstrated, employer financial responsibility for employee injury and illness due to well-known occupational risk exposures may grow to a very large sum. Whether or not legally acknowledged and included or separated for compensation purposes, the smoking component looms great for many industries and occupational risks. Company responsibility to its stockholders alone may require a prudent management to vigorously pursue smoking cessation at the work site.

Also, from the financial viewpoint of certain companies, the potential gains from smoking cessation efforts for the purposes of occupational health may be more significant than the potential gains from smoking cessation efforts for health promotion purposes. In particular, these would be especially companies with occupational risks associated with and exacerbated by smoking. The quantitative emphasis of this paper is on the financial rewards associated with reduced health-care spending and improved employee productivity. The potential gains from the occupational health aspect are more difficult to estimate. However, even apart from issues of meeting Occupational Safety and Health Administration requirements, they are likely to be magnitudes greater than the medical-care cost figures for many companies. For example, on June 5, 1981, *The Wall Street Journal* noted that a bond rating service had lowered the ranking of the Johns-Manville debt issues because of its potential outstanding uncertain obligations in regard to asbestos exposure. In August 1982, Johns-Manville filed for Chapter 11 bankruptcy to protect the company from the effects of thousands of potential awards, possibly amounting to hundreds of millions of dollars.

On October 7, 1981, *The New York Times* reported that the Supreme Court of North Carolina had apportioned smoking risk and occupational risk in the case of a Burlington Mills employee totally disabled by chronic obstructive lung disease (COLD). In any case, the company was ordered to pay \$3,000 per year for 6 years to the early disability-retired 54-year-old. This award may have been entirely prevented if smoking had been forbidden at the work site and employees aided to quit (32). Therefore, even under a very restricted occupational health liability court decision, a company may be running an annual work site early disability award risk of at least \$72 per year per smoker (see Table 2, Ref. footnote h).

Second, a sensible interpretation of OSHA regulations coupled with a concern for cost effectiveness may find that the marginal net present value of aggressive work site smoking cessation efforts is much greater than that for certain heroic efforts at altering production sites and technologies. For example, Selikoff and Lee have said "It would seem that control of cigarette smoking would have a much greater impact on the incidence of bronchogenic cancer in asbestos workers than further reduction of dust levels" (68). This suggests that it may be both in the public interest and in the employer's financial interest to assist employees to stop smoking.

Given the above data as to the *multiple risk* attached to certain occupational risks plus smoking, a company which has not made a substantial effort at work site smoking cessation might be held not to have acted responsibly in attempting to reduce occupational risk. Even efforts to encourage a shift by smokers to lower tar and nicotine cigarettes may be helpful (25, 28, 33, 46, 76, 93).

As a complicating factor, however, there has been some feeling on the part of certain employees' representatives that an emphasis on smoking cessation is a form of "blaming the victim" and would reduce the incentives for companies to exert full and appropriate efforts to reduce dangerous work site exposures. An example of this position is that of A. Mazzocchi, of the Oil, Chemical, and Atomic Workers International Union, who views industrial antismoking campaigns as a diversionary tactic in the area of reducing occupational health risks (61). He argues that the workplace should be adapted to its worker rather than vice versa. If this leads unions and employees' representatives to oppose company efforts to promote smoking cessation, it is an unfortunate and self-destructive view. In addition to the issues of cost effectiveness for society and the company, the very health, lives, and well being of millions of employees are involved, as are their own financial interests as citizens and taxpayers (42, 43). All of these interests, given the high multiple risks associated with smoking and certain occupational exposures, should, rationally, find employees greatly in favor of efforts to reduce and eliminate smoking in the workplace and in society as a whole. For example, even for lung cancer victims, ex-smokers have substantially lower deaths rates than do continuing smokers (35). The joint interests of employees and employers should promote their most effective cooperation in this area. Leaders of the International Association of Heat and Frost Insulators and Asbestos Workers have joined with the American Cancer Society in a program to help their members to quit smoking.

Table 2 summarizes the annual costs of smoking per smoker to a company by cost center. The sources and techniques employed are indicated in footnotes for Table 2. The author believes that the high range is an *underestimate* of true costs and that the low range of figures is a *gross underestimate*, reflecting the experience of a sample HMO population and based on systematic underestimation due to the limitations of that study.

CAPTURING THE BENEFITS OF SMOKING CESSATION

How much of the cost of smoking can business expect to save and "capture" through smoking cessation and over what period of time? In order to answer this question in terms of the cost ranges per "average" smoker calculated above, it is

necessary to first divide these costs into long-run and shorter-run categories and look at the evidence regarding the impacts of smoking cessation on each cost center. The long-run impact categories are health insurance, life insurance, and their portion in the involuntary smoker costs and occupational health awards. Most research on these topics indicates that full payoffs in these categories may involve a lead time of as much as 10 to 15 years.¹² The short-run payoff categories, with lead times of 1 to 3 years, involve absenteeism, productivity, fire losses, worker's compensation, and other accident-based losses, and about half of the involuntary-smoker costs. Second, one must refer to the literature relating smoking cessation and health-promotion activities to improvements in the outcome measures, including health and nonhealth variables; this is, unfortunately, weaker than one would prefer. Third, employee participation rates must be estimated. Fourth, the impact of labor turnover rates has to be calculated in order to estimate the proportion of benefits accruing to the present employer as compared with society in general or to future employers of the quitting smokers.

Summarizing, based on American Health Foundation and other work site (60) experience with screening and interventions to reduce risk factors for chronic diseases, including smoking cessation, one may expect fairly substantial short-run benefits (3, 5, 12, 41, 85). These would be derived from savings in the areas of productivity, absenteeism, fire risk, worker's compensation, and other accident losses. The cost figures given above suggest that these potential short-run benefits may range from \$169 to \$346 per year per ex-smoker (\$22-44 in fire, worker's compensation, and accidents; \$40-80 in absenteeism; and \$80-166 in productivity plus \$27-56 from the involuntary smoker effect). Such savings should be visible by the end of the third year of a program to reduce risk factors. The short-run savings may be at the expense of insurers, salvagers, and suppliers of repairs, but do not involve the potential long-run offsets that may follow long-run declines in chronic disease mortality and morbidity. (Please see Offsetting Complications in the Data, below.)

Let us review these data carefully, so that the bases of the calculations are clear. Short-run smoking cessation benefits are related largely to nonchronic disease (non-cancer and non-cardiovascular diseases) and nonhealth-cost aspects of smoking. They include the short-run health aspects, i.e., respiratory diseases, cough, effects of carbon monoxide, eye irritation, etc., plus the time devoted to smoking rituals, clean-up, and dirty air cost effects. There is extensive evidence that all these extra costs of smoking are virtually eliminated within a 3-year period when a smoker stops. For example, extra fire losses due to smoking at the work site have been calculated above at a range of \$5-10 per smoker per year. When a smoker stops smoking his or her risk of causing a fire by smoking is zero. Similarly, worker's compensation and other accident costs have been estimated to

¹² The 15-year figure is related to measures of the annual probability of all causes mortality for 55-year-old males; the risk of mortality for ex-smokers declines after about 10 years of quitting to close to the level of the never-smoked group; it may even be superior to the never-smoked group after 15 years of quitting (78). The risk for incidence (not necessarily fatal) of coronary heart disease of an ex-smoker relative to continuing smokers drops rapidly after 1 to 4 years of quitting. Doll and Peto's findings indicate that 5 years of nonsmoking is required to significantly reduce the health risks of smoking (21).

range from \$17 to \$34 per smoker per year. While it may be argued that some aspects of excess accident behavior related to smoking may reflect accident-prone behavioral patterns of which smoking is a symptom rather than cause, the ability to successfully stop smoking involves a basic change in behavior. Thus, one may assume that those smokers who quit have improved their life-style so as to greatly reduce their accident proneness (if any).

Absenteeism costs due to smoking may be analyzed in a somewhat similar fashion to the discussion on accidents. The evidence is strong that the excess absenteeism associated with smoking largely reflects a greater frequency and severity of (non-life threatening) respiratory and digestive diseases. These may be related also to other unhealthful life-style habits, such as excess alcohol consumption. A program directed at smoking cessation probably should be part of a total effort at health promotion in order for the gains of each aspect of a healthful life-style to be fully attained. The evidence that absenteeism is one of the first evaluation measures of health promotion to register significant gains (generally, within a year or two) is too repetitive in different contexts to ignore (3, 5, 12, 41, 60, 85). The cost range, of \$40 to \$80, reflecting an excess absenteeism of 1 or 2 days a year, is an underestimate in both time and value in the current economy.

The productivity estimate is largely based on the time wasted associated with smoking rituals. The extra clean-up costs, damage to the workplace, ventilation costs, errors, etc., have been estimated less well in the literature. We have arbitrarily cut the \$166 underestimate in half to provide a lower boundary reflecting a waste estimate of one-half minute per hour per working day. These "pure" costs of smoking are real and extensive as reflected widely in descriptive literature. Unfortunately, many of these pure smoking costs have not been scientifically studied or evaluated. Smoking cessation would reduce these costs to zero.

Involuntary smoker costs are derived by calculating one-fifth of the short-run costs of smokers, omitting fire losses. There is reasonably extensive literature indicating that involuntary smokers suffer breathing damage equivalent to that suffered by mild smokers, which is estimated to be one-fifth of that of smokers of one pack per day. One may question the productivity loss aspect assigned to nonsmokers in the vicinity of smokers. In their cases the calculation reflects not the rituals of smoking, but the other productivity loss aspects plus the added effects of the physical and psychological irritation, which serve to reduce the efficiency of involuntary smokers.

It is likely to be a matter of from 3 to 10 to 15 years before health care costs are significantly affected as the chronic disease risk level of the ex-smoker moves toward levels of nonsmokers (21, 78). In this regard, one must recognize that the data on the health status of ex-smokers as a group is adversely affected by the fact that many estimates of numbers of ex-smokers include persons who quit smoking due to the occurrence of serious illness. These persons display an increased risk of disease and death in the short run associated with the illnesses which led to their quitting. This short-run period may last from 1 to 3 years. This increase in short-run risk of illness and death does not apply to healthy smokers who quit before being forced to do so by serious illness.

The actual company capture proportion of these potential savings in costs would depend on the employee participation rates in smoking cessation programs.

the success rates of the programs, and the company's annual labor turnover ratio. Participation rates of 60–70% have been attained in certain companies, but 40–50% is more usual (41, 69). A 50% success rate for those who complete the program is not unusual in well-run programs, although the usual reported longer-term success rate is closer to 25% (24, 51, 66, 77). A less than 33% annual labor turnover ratio would be necessary to anticipate a significant capture of the short-run benefits, particularly in regard to absenteeism and productivity. Turnover ratios of less than 10% would be required for the capture of longer run health care costs savings.

COSTS AND BENEFITS OF SMOKING CESSATION—A COMPANY EXAMPLE

The following example is adapted from data based on the experience of the Campbell Soup Company. A voluntary smoking cessation program involving 70 participants indicated a cost of \$500 per successful quitter. This was based on a 20% quit rate at the end of 1 year. Most of the \$500 cost was accounted for by the value of the time off work granted to the participants to attend the smoking cessation clinics. This cost figure is likely to represent an upper boundary to single time investment in smoking cessation. When \$169–346 per smoker per year is used as valuation of short-term benefits, then the company enjoyed a 34 to 69% gross annual return for the period of time of the continuing employment of these ex-smokers, on an investment of \$500. If one assumes that the benefits do not begin until the third year and discounts, using a 10% discount rate (to emphasize underestimation of benefits, even though 4% is more common) to obtain net present value, the annual rate of return on investment is reduced to a range of 25 to 50%.

The American Health Foundation's experience suggests that, if the company does not pay for time off to attend smoking cessation sessions, but does pay the major portion of the cost of the program, the average cost per quitter should be less than \$200. This is based on a 50% quit rate after 1 year. American Health Foundation research also suggests that clinical efficiency is enhanced if participants have some financial stake in the smoking cessation efforts. This is related to the need to demonstrate true commitment by the potential quitters. Therefore, it is possible for company to enjoy a 100% plus annual rate of return on its one-time investment in smoking cessation for continuing employees (30, 63).

Please note that, even at the relatively minimal success rate of 20–25%, and the full imputation of the direct and indirect costs of attending a smoking cessation clinic, Campbell Soup's rate of return on a one-time investment in smoking cessation greatly exceeded the average rate of return on stockholder's equity (e.g., about 15%) of the 500 largest U.S. industrial corporations for any recent year, as reported in the annual May issues of *Fortune Magazine*.

TWO OFFSETTING COMPLICATIONS IN THE DATA

The literature's comparison of the health experience of ex-smokers and continuing smokers is contaminated by the fact that, as previously mentioned, a large

proportion of voluntary quitters come from the ranks of those who quit because of illness—chronic and acute. Thus, the net benefit in both amount and length of time to observed outcomes of quitting by healthy smokers is underestimated in the available data.

It is also true that a number of smokers quit voluntarily every year. If these are included in the success rates of smoking programs, the true effectiveness of these programs is being overestimated. A spontaneous quit rate of about 5–10% is suggested in the literature (77). The Stanford Heart Disease Prevention Program reported a 3% quit rate in the control community. However, these quitters overwhelmingly report nonparticipation in organized smoking cessation, especially group programs. One may further argue that if companies were to enforce no-smoking rules at the work site, the number of quitters would consist of the 5–10% spontaneous rate plus the 25–50% group-therapy rate (41, 69).

SUBSTITUTING ONE COST FOR ANOTHER

It has been argued that a successful national smoking cessation effort would significantly increase the number of retired persons, and thereby intensify the problems of the Social Security and other retirement systems. These analyses show that in the long run, national savings in annual medical-care spending on chronic and acute diseases and in indirect costs would be more than offset by the rise in the cost of retirement benefits. This view is based on simplified and static projection analyses of complex and dynamic issues.

Let us first look closely at the nature of the Gori–Richter argument and its limitations. Second, let us clarify the lack of its application to the discussion of potential business gains from smoking cessation in this article.

The Gori–Richter article (26) is based on simply asking the Wharton econometric model what would happen to the U.S. economy if U.S. mortality rates for five major causes of death (major cardiovascular and renal diseases, malignant neoplasms, accidents, diseases of the respiratory system, and diabetes mellitus) were reduced to the level of the next-to-lowest rates in industrialized countries. These causes of death are most important for the population over 50 years of age. Therefore, it is the equivalent of asking what would happen if the average age of our population were to rise even more rapidly than it is presently, if we were to have particularly large increases in the population over 50, 60, 70, and 80 years of age, and at the same time, the labor force were restricted to those under 65. Quoting from the Gori–Richter study, "The model does not handle the health care system as a separate sector, and as such it does not take account of changes in population composition; nor does it include the cost of prevention strategies."

The aging *healthier* population could mean alterations in hospital care demand and supply and provider prices, and competing health problems at later ages.

Again, quoting from Gori and Richter:

Such developments and others could affect the economics of the disease care system. . . . Prevention would also alter a variety of factors of economic significance, in ways that are not easily analyzed and that the Wharton model—or any other model—could hardly incor-

porate at this time. These include patterns of morbidity and disability, the demand for recreation and education, and the relative importance of manufacturing and service industries, to mention but a few. To study these numerous interactions is beyond the scope of our analysis, which simply points to the need to consider the dynamic interplay of health, disease, and the economy.

The Gori-Richter argument arrives at dismal Malthusian-like conclusions because, like Malthus, they reason in a narrow range, omitting the alterations in key variables forced by events already in process of development. Thus, the growing populations of countries with a modern agricultural system have not starved because of great improvements in agricultural productivity which were already beginning in the early 19th century when Malthus was writing. Similarly, the average age of the U.S. population is rising from a present age of 27 to 37 in the next few decades, (average total population, all age groups, mortality rates from cardiovascular diseases have declined by almost 30% since 1968). To deal with such changes, we must make significant changes in the structure and financing of our Social Security and retirement systems to be fair to all. The real point of the Gori-Richter paper is to emphasize the need for some honest, hard, long-run thinking about such changes, not to argue that we cannot afford to reduce the incidence and prevalence of chronic disease.

In any case, the Gori-Richter argument does not apply to our argument about business gains from smoking cessation. We emphasize short-run gains (1 to 3 years) as being greater than long-run gains. The short-term gains have nothing to do with reducing mortality from chronic diseases, at any age. These short-run gains appear to be significantly greater than the costs of implementing smoking cessation efforts. In the longer run—10 to 20 years—smoking cessation may add at most an additional 350,000 lives per year to our population. Less than 20% of that increase would involve persons over 65 years of age (a population growing by 1½ million per year). Therefore, smoking cessation, if totally successful, would in the long run increase the over 65 population by an additional 5% at most. Thus, by itself, smoking cessation, even in the longer run, is unlikely to add an intolerable burden to our retirement system. Atkinson and Townsend (6) calculated, in 1977, the economic impacts of a program to reduce smoking in Great Britain by 40%, back to the levels of 1920:

It is estimated that this reduction would have only marginal effects on National Health Service usage, but would result in important savings in sickness benefit and widows' pensions; against these savings are set the extra costs of retirement pensions and a health publicity programme, but it is estimated that the overall effect would be a reduction in Government expenditure together with an increase in tax revenue. There could also be a saving of a quarter million lives by the end of the century and much avoidable illness.

In the short and intermediate terms (1 to 10 years) most of the lives we would be prolonging—especially in work site programs—would be concentrated in the working age population. It is also essential to recall that smoking is a major risk factor for the younger age groups according to the Framingham logistic. Given the level of employment, the net effect would be a short-run rise in the GNP and national savings, which is currently one of our most needed economic developments. In addition, the long-run decline in medical spending on chronic diseases

and in increased spending on prevention and improved employee productivity will add to the GNP.

All other factors remaining the same, an increase in the current level of national savings, due to a reduction in the costs of smoking discussed above plus a decline in premature mortality, should help to reduce interest rates. This should lead to an increase in capital spending, productivity, employment, and a higher rate of growth in the GNP. While this is not the place to model such a sequence, it is entirely possible for the higher levels of GNP thereby attained in the next 5 to 10 to 20 years to more than pay for, at unchanged taxation and pension deduction rates, the increased funds that will be needed in the 20- to 30-year future of a greatly increased retired population. This type of sequence due to successful national smoking cessation is especially important if we remember that our population is, in any case, growing very slowly and aging.

The demographic effects and related considerations, apart from the financial burdens of maintaining a larger fraction of the population in a nonproductive status, will require major alterations in institutional structures, including our view of compulsory retirement ages which are already being increased. For example, by 2020 we will need to keep more older persons, especially the highly skilled and experienced technicians and managers, at work in order to keep our economy operating.

A simpler shorthand response to those who argue that prolonging lives by reducing the impacts of respiratory cancers and cardiovascular diseases will add to the long-term problems of our society and its economy is that "we should be so fortunate as to have to face such added problems." Any model that says that our society cannot afford to reduce the incidence and prevalence of chronic diseases by primary prevention must be basically flawed as an instrument of analysis of the issues. Actually, our society cannot afford to allow the "baby boom" generation (born 1945-1957) to manifest the chronic disease rates now prevalent in the over 65 population (91).

CONCLUSION

The data reviewed in this article offer an estimate of the annual costs of smoking to the average employer. These costs ranged from \$336 to \$601 in January 1980 dollars per average smoking employee. The short-run costs, i.e., those that appear to be subject to the possibility of change within a 3-year interval, reflect the nonmedical care, non-life insurance, and non-occupational health risk cost centers. These are the fire and accident costs, the absenteeism, the productivity, and the short-run involuntary smoker effects. The short-run costs are estimated to range from \$169 to \$346 per smoker per year. The long-run costs, which may take as long as 10 to 15 years to favorably impact, range from \$167 to \$255 per smoker per year. The data suggests that all these estimates are understatements of the size of the smoking problem, the lower level of the range being a deliberate, in some cases arbitrary reduction of already underestimated costs by 50%. Even so, it appears clear that it would be profitable for the typical employer to invest at least \$150 per year in a program to encourage employees to quit smoking—at least in the workplace.

APPENDIX 1: EXAMPLE OF A COMPANY NON-SMOKING PROGRAM

Since 1977, Johns-Manville Corporation has pursued a nonsmoking program at the work site, beginning at two sites and extended, in 1978, to all corporate facilities. While detailed evaluation data is not yet available, the company has reason to believe that the program is working and has been basically successful in stopping work site smoking. So far, a relatively small number of employees have used the smoking cessation clinics, but the smoking ban is being generally respected. Some employees who have violated the worksite no-smoking rules have been fired; arbitration rulings have generally supported the no-smoking policy. The smoking ban was instituted in a facility after smoking employees were provided with an opportunity to attend smoking clinics and after these clinics were completed.

The Johns-Manville nonsmoking program was announced in a President's bulletin to employees. It began by explaining the health risks associated with combined cigarette smoking and asbestos exposure at any level. The policy had three basic parts: no smoker would be hired to work in asbestos-using activities; there would be no smoking in any asbestos-using area, including workplace, offices, locker rooms, and cafeterias; the company would help smoking employees to stop by contracting with outside specialists in smoking clinics for employees and their spouses. The company actually paid for the clinic for those who completed the program, although the participant was required to advance 50% of the cost initially, which was returned to him, in parts, at various stages of attendance and successful completion of the clinic. Extensive literature distribution and meetings were employed to gain the cooperation of local managers, supervisors, union leadership, health and safety committee members, employees, and corporation health department personnel. The company has 14 plants in the United States and Canada, and employs some 8,000 persons.

Johns-Manville has had dozens of inquiries from similarly situated companies regarding this program.

APPENDIX 2: A CAVEAT

One must recognize that smoking is a very stubborn habit and a difficult one to stop. Many smokers do not wish to stop smoking even when they say they do and even when they have already suffered serious illnesses associated with smoking (2, 40).¹³ Respiratory cancers and lung diseases (e.g., chronic obstructive pulmonary diseases) are among the few leading causes of death registering rising mortality rates in recent years (54). This is a serious and costly national health problem that deserves a serious cooperative effort from all citizens. One of the greatest sources of difficulty in this area arises from senior management, both employee and employer, personally stubborn about their smoking habits. Society needs to improve its approaches and techniques of assisting the smoking popula-

¹³ As Kozlowski *et al.* (40) have pointed out: (a) Urine analyses disclosed that up to 20% of a group of heart attack patients, ordered to quit smoking by their physicians, lied about not smoking (b) Of a Philadelphia responding group of smoking parents of school children, 41% expressed interest in a smoking cessation clinic, 2% attended a preliminary meeting, 1.25% actually made use of the clinic.

tion in quitting. This continues to be true even though millions of persons have quit smoking over the last two decades and the proportion of the total adult population that continues to smoke has been reduced to about 35%.

In this context, one should recall the statement of Dr. John H. Knowles, late President of the Rockefeller Foundation

The individual has the power, indeed the moral responsibility to maintain his own health by observance of simple prudent rules of behavior . . . life is meant to be enjoyed . . . but the costs of individual irresponsibility in health care now becomes prohibitive. The choice is individual responsibility or social failure. Responsibility and duty must gain some degree of parity with right and freedom. (38)

Given the current crisis in health care costs, the society may have the right to insist that avoidable antisocial behavior, which is also in the individual's own interest, is unacceptable.

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Wanted: Smoking Policies for the Work Place

By MARVIN M. KRISTEIN

Nonsmoking programs are good for corporate health and employees, too.

Employers are taking a two-pronged approach to smoking. They are beginning to adopt no smoking policies in at least part of the work place. And they are offering programs — often with cash incentives — to aid smoking employees to quit. There is some evidence that both these types of programs may be profitable for the companies involved, and certainly for society.

These steps are attractive to employers concerned about health care, particularly if the costs of smoking to business are calculated. They also are attractive to employers concerned about occupational risks and suits brought by nonsmokers desiring a safe working environment.

The business of business is to make money. Financial officers are trained to adopt a risk-return attitude to making money. The objective is to maximize return for any given risk and to reduce the risks associated with any given return. Increasingly, companies are becoming concerned with the potential costs of high risk employees. The typical heavy smoker consuming more than a pack a day is running a 20 percent lifetime risk of respiratory disease and a 35 to 40 percent lifetime risk of heart attack, stroke and other cardiovascular problems. For persons age 30 to 49, State Mutual Life Insurance Company of America found smokers have a 4.3 greater rate of death from all causes than do nonsmokers.¹ This analysis is a matter of averages. Many smokers live long and productive lives. Many are gifted, brilliant, hard working and rarely ill.

Nevertheless, the question for the corporate planner and policy maker is one of risk-return. The typical smoker is at much higher risk for serious illness, premature death,

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accidents and absenteeism than the typical nonsmoking employee. To offset this real increased risk, the smoking employee would have to be clearly more productive than the nonsmokers.

Given this, it is instructive to analyze smoking policies in terms of how well they reduce health risks. Consider the following three examples. A do-nothing policy increases the risks, present and future, for a given level of return. A policy in which smoking is controlled in the work place, either by banning it in all or part of the office or hiring only nonsmokers, reduces the risks and is potentially cost-effective for most businesses. A third alternative, providing aids, supports and/or subsidies to help employee smokers to quit, perhaps as part of broader health promotion and health education programs, may increase the net profits and reduce the risks for many businesses but is probably less cost-effective than banning smoking.

Costs of Ignoring the Issue

A number of developments have taken place in recent years that illustrate why a company policy of ignoring the issue of smoking in the work place makes little sense for employers. To begin with, there is an increasingly smaller minority of adults who smoke. At the same time, the literature on damage such as respiratory disease to the involuntary smoker is growing, thus supporting the increasing militancy of nonsmokers as well as court decisions that nonsmokers are entitled to a smoke-free work environment. Legislation in California, Minnesota, Suffolk County, N.Y., and a growing number of communities around the country limits smoking in public places and provides for smoke-free work places for those who request them.

The costs of a do-nothing policy, in terms of smoking, are hurting employers. Recent research shows that the costs of smoking employees to business are \$300 to \$350 per average smoker per year at a minimum.² These costs include only short-term losses that affect employers such

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as fire, accidents, ventilation, cleaning, productivity and occupational health risks. One Los Angeles company estimates production losses alone at \$675 per smoker per year. Adding longer term costs such as absenteeism, premature mortality and illness would raise the total to at least \$1,000 per year for each smoker.¹

It is curious, given these cost estimates, that company policies dealing with smoking largely have been in response to occupational risk, safety, product cleanliness, customer conduct and office appearance, and not to employee health, productivity and health care costs.

For example, Campbell Soup's company-wide no smoking policy was started more than 30 years ago to promote product cleanliness. It covers both production line and office employees to make it an equitable policy for all Campbell workers. In recent years, the company expanded its health promotion program to include subsidies for smoking cessation classes.

The history of Johns-Manville Corp. provides a lesson in the importance of heeding the relationship between an occupational risk and smoking. The surviving Manville Corp. (Johns-Manville went into bankruptcy in 1983 as a consequence of the asbestos related health care claims of its employees) currently forbids smoking in relevant parts of the work place. The company also hires only nonsmokers and has fired employees who do not obey no smoking rules.

Given the synergistic relationship between smoking, asbestos exposure and lung disease, if Johns Manville originally had followed such a company-wide no smoking policy, the actual risk of lung disease to employees might have been reduced by over 90 percent.² Asbestos related lung disease is highly related to smoking. Asbestos workers who smoke have 11 times the risk as nonsmoking asbestos workers.

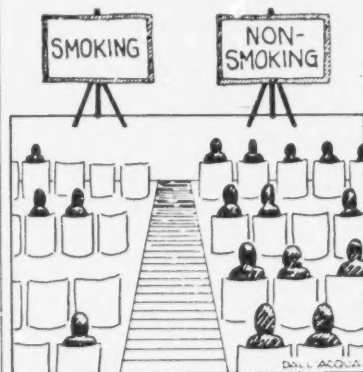
A company does not have to be in the asbestos business for its employees who smoke to be at increased risk due to work place exposures. The synergistic effects between smoking and occupational exposures are significant for industries involving a wide range of chemicals, radioactive materials and metals as well.

An increasing number of companies, large and small, are coming to the conclusion that the costs of a well-designed and carefully implemented corporate program, can decrease the risks and costs associated with smoking. Three Gannett newspapers in Maine and Boeing are among the employers that recently instituted no smoking policies. Also reflecting employer preferences is that employment agencies report an increasing demand for nonsmokers.

Most companies, nevertheless, have not adopted a policy about smoking. Some are reluctant to institute a smoking policy because they are too dependent on their business relationships with the tobacco and tobacco related companies and do not want to antagonize them. In such cases, a company does, indeed, need to be cautious about adopting a no smoking policy. But this does not free management from its responsibility to respond to the continuing pressure from nonsmoking employees.

Another situation in which it is difficult — and in

some cases impossible — to institute a company policy against smoking is if a significant number of the company's leading executives and/or key supervisory employees are committed smokers. Nothing can be accomplished in a company unless top management really wants it. The office dynamics mitigating against instituting no smoking policies are likely to change as younger people rise to positions of authority. Statistically, there are fewer people, particularly men, age 30 to 40 who are smokers in contrast to people age 50 to 60. It also may be that as more and more evidence is developed about the profitability of no smoking policies, stockholders of public companies with resistant top management will have the clout to introduce such measures.



Objections Overruled

The majority of companies that have not implemented no smoking policies are basing their reasoning in large part on outdated information and basic ignorance of the issues involved. Relatively few of these companies have even thought seriously about it. This, however, is likely to change. The published evidence on the smoking, health and work place interaction has greatly expanded in the last few years along with significant changes in public attitudes. Nonsmokers, for example, see themselves as a majority, and more and more are demanding smoke-free environments. Court decisions and state and local legislation reflect these demands. Recent actions by the tobacco industry itself, in terms of diversification and promoting sales to foreign markets, indicate a basic acceptance of a lost cause position. Even the tone of recent tobacco advertising recognizes that smoking is not for everyone.

While these are all positive and useful steps towards developing a nonsmoking policy, there is also a lag time of several years before business leaders will begin to respond affirmatively.

Some companies are aware of the health problems

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Company Activities in Smoking Control

Fifteen years ago, 78 percent of the population felt that managers should have the right to prohibit smoking in their place of business. Now the desire for a smoke-free work place is very much a reality and extends beyond the traditional boundaries of management-labor, employer-employee and white collar-blue collar concerns.

A review of the literature and current status of smoking control activities suggests that worksite programs have a unique potential to reach those workers who smoke and underutilize existing smoking cessation services. As Carole T. Orleans and Robert H. Shipley of Duke University Medical Center point out in their research, work place social supports can provide nonsmoking norms and reinforcement to help maintain lasting change in smoking behavior.

Range of Approaches

Company activities to control smoking in the work place range from policies restricting smoking in designated areas, to completely banning smoking at the worksite, to offering smoking cessation programs. Some employers provide incentives for employees who quit smoking that include cash and other tangible rewards, as well as social reinforcement through personal recognition, praise and company sponsored contests.

Smoking cessation strategies may vary depending on the number of employees, their smoking behavior, the kind of work performed and the company's involvement in the smoking industry.

The Institute on Worksite Wellness of the Washington Business Group on Health, in an ongoing review of such strategies, has identified several factors contributing to successful smoking cessation programs.

One such factor is that company policies are easier to implement and less divisive when they are developed voluntarily. For example, a study on employee smoking at Pacific Telesis revealed that 7 out of 10 (71 percent) of all employees and over half (51 percent) of the smokers would like some type of smoking policy for their immediate

work area. About three-fourths (73 percent) of all employees would like to have a smoking policy in effect for other areas at the worksite as well. Six out of 10 (59 percent) would like to see designated smoking and nonsmoking areas, for instance, in cafeterias and conference rooms.

A second success factor is that companies that offer incentives for smoking cessation realize the greatest return on their investment when they provide access to effective smoking stoppage methods, that is, those with a proven track record. This is true even when a company's program consists primarily of referring smokers to treatments available outside the work place.

Rodale Press banned smoking in January 1982 for its 350 employees. When a few workers had trouble abiding by the ban, the management encouraged them to enroll in SmokEnders, a private smoking cessation program, and Rodale refunded the \$75 registration fee as well as paying a \$25 bonus to those who successfully quit smoking.

A third important factor is to precede the offer for cessation treatment with educational campaigns and/or corporate pressure or incentives to promote quitting.

On April 1, 1984, the Group Health Cooperative of Puget Sound implemented its ban on smoking in the work place for its 5,000 employees. This prohibition represents the culmination of a two-year effort by the largest health maintenance organization in Washington state. Motivated primarily by its mission of wellness, the smoke-free policy has encouraged most if not all of its smoking employees to smoke less and many to quit smoking altogether. Cessation efforts of GHC employees are supported by the company through the availability of self-help materials and free smoking cessation classes. Employees breaking the rules repeatedly may even be fired under the new policy.

As Orleans and Shipley in their review found, successful worksite programs harness and exploit the "chief therapeutic resource — a cohesive support network" with corporate contingencies reinforcing nonsmoking.

Sari Feldman, Washington Business Group on Health

created by smoking and the costs of this to their corporate budget, but they so far have declined to develop no smoking policies at the worksite because they view such policies as unenforceable. This, however, is a red herring argument. To begin with, a policy of no smoking plus a policy of hiring nonsmokers only comes under a company's right to define the nature of the work place and the appropriate behavior of its employees while at work. This right has been upheld in most legal contexts. For example, the U.S. Equal Employment Opportunity Commission has held that such a policy does not involve discrimination as long as it is equally applied to all employees.

Once a company policy is set, most people follow it. No law, however, is followed perfectly. Think of speed limits. A no smoking policy can nevertheless be effective even if only 90 percent of employees follow it.

The key to appealing to employees to comply with no smoking policies is to introduce policies in a businesslike manner. The point is not to punish or attack smokers. Employees must understand that the no smoking policy involves the rights of nonsmokers and is designed for the best interests of the company. Introducing a program in such a fashion is likely to involve little employee opposition or attempts to sabotage it by smoking employees taking an excessively long time on cigarette breaks.

A carefully introduced program will cost money, perhaps in the range of \$5 to \$10 per employee for setting up the program, arranging employee meetings about the policy, and promoting it in special newsletters. The employer, however, stands to get a high rate of return on that investment. For example, suppose a company with 1,000 employees spends \$10,000 to introduce a no smoking

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policy. Based on national averages, the company will have 300 smoking employees, each costing the employer \$300 a year in extra expenses due to their smoking. If they stop, the employer could save \$90,000 a year — all based on a one-time capital investment of \$10,000.

Calculating Costs

For managers used to dealing with hard numbers — profit and loss, for example — it is difficult to think of developing a company policy based on inferences from estimates. Many of them believe that true proof of the net gain of adopting a company smoking policy is missing because there is no smoking gun type of evidence that smoking employees involve a net cost to their employers that can be eliminated through nonsmoking policies.

While it is true that such evidence has not been published widely, a number of companies have internal studies that are firm enough for them to base policy upon. Based on a 20 to 25 percent success rate for Campbell Soup, for example, it has been calculated that its annual rate of return for money invested in smoking cessation programs for employees is between 25 and 50 percent. That means that for every \$1 invested, they will earn 25 cents to 50 cents a year.⁴ Other companies that have reported that smoking cessation efforts are cost-effective include Metropolitan Life Insurance Co., Dow Chemical Company, Johnson & Johnson, New York Telephone Co., Ford Motor Company, IBM, E.I. DuPont de Nemours & Co. and Cybertek Computer.⁵

In general, the business community cannot afford to wait for the results of long-term controlled trials of this subject. While the data on the costs of smoking are estimates and inferences, they are based on direct medical care spending and loss of gross national product (GNP), and on epidemiological studies connecting certain illnesses to smoking. These estimates are not guesses but represent aggregate cost data, time and motion studies and legal standards. The estimates based on real dollar costs involve dividing by relevant population sizes to arrive at per smoker figures. Obviously, not every smoker actually produces the average cost figure, but for every smoker who is not responsible for this average cost there must be a smoker producing twice that amount.

Using figures inflated to approximate late 1984 dollars, an estimate of the excess medical costs to the country of smoking (that is, illnesses that would be insignificant if it were not for the fact that people smoke) is \$24 billion per year and the loss in GNP, using minimal human capital values of life prematurely lost and income lost due to these avoidable illnesses, is \$36 billion per year.⁶ These figures do not include the cost of pain and suffering and the multiplier effects on family, friends, employers and society of premature disability and death due to smoking.

Public Health in the Private Sector

Major health gains are expected from instituting no smoking policies in the work place. Both employers and the population at large will benefit. In one sense, it can be argued that programs for public health gains really

fall under the aegis of the government. In fact, employers might not even enjoy the benefits of successful employee smoking cessation programs because of labor turnover. An employee who had participated in a smoking cessation program in company A may subsequently move to company B.

Perhaps the strongest argument against a nation and in some cases a company adopting no smoking policies is that the net gains from them are more than offset by the costs of an increase in the numbers of older persons due to the reduction in premature mortality associated with smoking.

"The costs of a do-nothing policy, in terms of smoking, are hurting employers. Recent research shows that the costs of smoking employees to business are \$300 to \$350 per average smoker per year...."

It is ironic that the ultimate defense of smoking involves accepting the most serious accusations against it, that is, it serves to significantly reduce the survival rate of adults so that the savings in retirement payments may be larger than the cost and GNP savings while these persons live. If the lives of retirees are valued at zero, it is cheaper for the society to let them die at a younger age. If this economic logic is pursued further, it would be even more cost-effective for the society (and companies paying for employee retirement) to find a more perfect means of killing everyone on his or her 65th birthday without producing the associated illnesses and productivity losses involved with smoking. A fuller public discussion of this point as a defense for opposing a nonsmoking policy in the work place could, in fact, convince more people that such a policy is the only one that is morally acceptable. ■

NOTES

1. M.D. Cotwell and B.L. Hirst, "Mortality Differences between Smokers and Nonsmokers," (company document) State Mutual Life Assurance Co. of America, Worcester, Mass., Oct. 22, 1979.
2. M.M. Kristein, "How Much Can Business Expect to Profit from Smoking Cessation?" *Preventive Medicine* 12:358-381, 1983.
3. D.P. Rice and T.A. Hodgson, "Economic Costs of Smoking: An Analysis of Data for the U.S.," presented at the Allied Social Science Association annual meeting, San Francisco, Calif., Dec. 28, 1983.
4. M.M. Kristein, "Asbestos Workers and Lung Cancer," *American Journal of Public Health* 71:1409, 1981.
5. Kristein, *op. cit.*
6. R.S. Parkinson et al, *Managing Health Promotion in the Workplace* (Palo Alto, Calif.: Mayfield Publishing Co., 1982).
7. Rice and Hodgson, *op. cit.*

Senator STEVENS. Our next witness is Dr. Stanton Glantz, associate professor of the University of California at San Francisco, and president of Californians for Nonsmokers' Rights.

Doctor, good morning.

TESTIMONY OF STANTON A. GLANTZ, PH.D., ASSOCIATE PROFESSOR, UNIVERSITY OF CALIFORNIA AT SAN FRANCISCO, AND PRESIDENT, CALIFORNIANS FOR NONSMOKERS' RIGHTS

Mr. GLANTZ. Good morning. First of all, I have to tell you, I was a bit nervous about coming to the Senate. I found it was reassuring to me to hear the same sort of drivel from the Tobacco Institute's people in Washington that we have come to expect in California.

I hold a Ph.D. in engineering and economics from Stanford University, and I am now an associate professor of medicine in the division of cardiology at the University of California, San Francisco. My research work has to do with the mechanical function of the heart, nothing to do with smoking.

This has become a time-consuming hobby for me. I am, as you said, president of Californians for Nonsmokers' Rights, an organization that has thus far helped to pass legislation protecting nonsmokers from the toxic air pollution of secondhand smoke in 44 communities in California encompassing about 9 million people. I think that your bill is a very important element in the effort to protect nonsmokers from the poisons in secondhand smoke because none of the bills that we have helped pass in California or elsewhere cover the Federal Government or Federal employees. I routinely receive letters from Federal employees complaining about this fact. I think you are filling a very important void.

All discussion of the issue of involuntary smoking has to be predicated on the fact that the issue is closed from a scientific point of view. We, as scientists, will still be discussing the details and the specifics for years, because that is what scientists do. But, every independent, organized, scientific body that has reviewed the evidence—the National Academy of Sciences, the Surgeon General, the World Health Organization, the Medical Research Council of Australia, to name a few—has concluded that involuntary exposure to tobacco smoke is a health hazard that merits remedial actions. You should not allow yourself to be tricked by the professional quibblers that the Tobacco Institute hires or the meetings they, themselves, have sponsored in such impressive-sounding places as Vienna or Geneva.

The simple fact is that you need not be a scientist with a lot of fancy, expensive equipment to know that secondhand smoke is a serious form of air pollution. If people were smoking in this room, the air would be white; it would smell; our eyes would burn; our throats would burn. Some people would get nauseous; they would probably develop headaches. If you went outdoors and it was that polluted, you would be outraged, and you would be right, as Jim Repace described.

My involvement in the issue dates from 1978, when I worked with a group of people that attempted, unsuccessfully, to enact a California Clean Air Act by initiative statute. We began the campaign with a 3 to 1 majority in favor of the law, but the cigarette

companies came into California and spent \$6.5 million on a massive advertising campaign and defeated the law.

The only organized opposition to that law was from the cigarette industry; the only organized opposition that we have faced anywhere in California has been from the cigarette industry. There has never been an organized group of smokers that has come and testified against any of the bills that we have supported. This is not surprising, given that a recent survey done by the Lou Harris organization showed that three-quarters of the smokers are in favor of laws restricting where they can smoke.

The reasons for that have been touched on earlier by earlier witnesses: Some smokers want a place to smoke in peace, but many more smokers will simply sit in the no-smoking areas as a way of reducing the amount they smoke.

After the tobacco companies beat us twice at the State level—because basically, to win a State initiative in California, you need good advertising agency and lots of money—it helps if you have no scruples—the tobacco industry meets all of those criteria quite well—we shifted gears and began organizing at the local level.

Since we started this strategy of supporting local ordinances and some State legislation—and by the way, we also provided some assistance to the people in Alaska—we have not been defeated once because local legislators have simply listened to their constituents rather than the tobacco companies' lawyers, lobbyists and offers of campaign contributions.

As I said, every law we have supported has passed, and to my knowledge, the important thing about why these laws are passed is, as I said, that there is an overwhelming consensus that it is desirable to protect nonsmokers from the toxic chemicals in second-hand smoke. When you pass a law setting up nonsmoker protections, what you are simply codifying a change in social attitudes that has already occurred.

The Tobacco Institute's own survey research shows this. Given this consensus, why do we need the laws? Why can't we depend on common courtesy, as the tobacco industry urges upon us in their advertising? The reason is quite simple: Common courtesy is really a recipe for individual confrontation. Under the current situation, individual nonsmokers are forced to confront individual smokers and ask that they smoke elsewhere. Most people are just not that aggressive. I can tell you as the president of one of the more active organizations in this area, I went out to breakfast with my wife the other day, and somebody lit up a cigarette nearby, and I just didn't want to have a fight with the guy. So we just suffered.

And I am much more aggressive on this issue, I think, than the average member of the population. Another problem is the ubiquity of smoke in the air; if one person in the back of this room lit a cigarette, we would all know it. People think a lot more people are smoking than really are. All of this can be changed very dramatically, very simply, by putting up a simple "No smoking" sign. What that does is it puts the smoker on notice that it is not an area to smoke in and it also legitimates the boldness of the nonsmoker saying to someone; "Please don't smoke".

Let me give you an example that dates back to before we started winning in California. I was back in the Minneapolis Airport in

Minneapolis, MN, enjoying the Minnesota Clean Indoor Air Act, the first legislation in this area, which had passed back 1975. I was frankly jealous of all the nice, nonsmoking areas in the airport. A hefty fellow—taller than I was, a cowboy, had a hat, the whole bit—sat down next to me and started to light up a cigarette. I had gone through two political campaigns saying if there was a "No Smoking" sign and you just asked someone to put out a cigarette, they would. So I figured I had to put my money where my mouth was. I leaned over and said, "Excuse me, sir, would you mind smoking in the smoking section?" expecting to be stepped on.

The man looked very embarrassed and at first he looked a little irritated. Then I pointed out the sign and he said, "Oh, I'm sorry," and put the cigarette away. It is very interesting. He didn't go to the smoking section. He put the cigarette away. That was one less cigarette that that cigarette company sold.

To understand the impact of that very simple act of just putting that one cigarette back in the pack consider what Mr. Califano pointed out: If every smoker in the country did that once a day, that would be 22 billion cigarettes a year the cigarette industry wouldn't sell.

So, given these statistics, it is not at all surprising to us that the tobacco companies are willing to drop a few million dollars trying to stop the inevitable move toward nonsmoker protection.

Despite dire predictions from the Tobacco Institute of earthquakes, and fires, and all sorts of other disasters befalling us in California each time one of these laws is proposed, they have all gone into force very smoothly.

In my written testimony, I have submitted several letters from the local enforcement agencies attesting to that. No city or county that has ever passed an ordinance anywhere in the country has ever weakened it or repealed it.

Senator Stevens, you said you were wondering when the Federal Government would have some liability for a worker injured on the job by secondhand smoke. In last Saturday's San Francisco Examiner a story appeared that a woman who works for the—I believe it was a Defense Supply Agency—was just awarded \$45,000 in damages from injuries due to secondhand smoke on the job. She is expected to get another \$60,000 in backpay. So, in fact, those things that you were concerned about have already started to happen.

We think it is important that the legislation basically contain three things: The first is that there be signs posted in the nonsmoking areas. Cigarette companies work, often hard, to get rid of the signing requirement. That is necessary for the reasons I already alluded to.

Second, there needs to be a capacity for strong enforcement. I think this is very important because it leads people to take the bill seriously. As the gentleman from Alaska testified, there is usually a period of a few weeks when things are settling in. There are occasionally recalcitrant people, especially smoking supervisors. It needs to be made very clear to them that you are serious about the workplace smoking restrictions.

We have found that in the local legislation, they usually had a fine provision similar to the one that you say you now removed from your bill, and that it was important for the messages to be

sent that enforcement is a serious issue. To our knowledge, there has never been a fine levied anywhere in California.

We have had some concern about this question of fines in Federal legislation and have done a little research. In fact, we think the provision that you deleted really isn't necessary anyway under the Federal statutes. Although, I am not expert on these things, I think it would be useful that the legislative history of this bill show that the five provision was deleted for technical reasons and not to somehow send any message that you are not serious about enforcement.

Third; and finally, there needs to be a clear statement that the right to breathe clean air takes precedence over the choice of smoke. This is language that is in almost all of the bills or the ordinances we have helped pass in the last few years. We would simply add, on page 3, where you say there needs to be an accommodation, just the phrase: "Provided, however, that in any dispute arising under the rules and regulations, the needs of nonsmokers receive precedence."

I have also provided Susan Arnold with a few other suggested additions to the language which would specify, in slightly more detail, the parameters under which policies would be implemented by the different Federal agencies.

We found that it is very important to leave the details of implementation to the specific agencies that are involved and the specific worksites and the specific supervisors and to not impose a great administrative superstructure on them.

But we have also found—and we have been told this by several of the enforcement agencies which work much as they do in Alaska, mostly through education and discussion—that giving some guidance as to how these policies should be structured in the law greatly simplifies their efforts.

I have no doubt that passing the legislation before you will quickly, simply, and inexpensively clean the air for Federal employees, and as I said in my opening comments, fill an important gap in existing State and local laws. It will also help to encourage other public and private employers to follow your lead, and it will lead to a safer and healthier environment for all of us.

Thank you.

Senator STEVENS. Thank you. I congratulate you on the success that you have had in California and for your willingness to come here so far from your place of business on your own and volunteering to assist us in this effort. The interesting thing about it seems to be that particularly on the enforcement side of it, people are saying that is really a way for us to hire more people to be guards in Federal buildings. We don't need any more guards in Federal buildings.

Mr. GLANTZ. No.

Senator STEVENS. Go ahead.

Mr. GLANTZ. If you read the letters appended to my testimony, the Alaska experience is typical. There is a period of a few weeks or a short period where basically, one person ends up working quite a lot of their time educating people, telling them what their requirements under the law are, helping them to develop policy.

Then that tapers off very fast, and in San Francisco, which was one of the most hard-fought campaigns, because the cigarette companies actually forced the referendum on the law, they have one person who spends about 10 percent of his time mostly giving out information to employers.

Again, once it is made clear to people that the policy is there and that the management is serious about it, the mere presence of the signs will take care of the enforcement.

The suggested changes to the language, which I gave Susan before the hearing, had a couple of things in there having to do with posting of the policy at a place where employees can see it and also notifying new employees as they are hired of the existence of the policy.

Those things seem to help quite a lot.

Senator STEVENS. That is very good. Does Los Angeles have a cigarette law?

Mr. GLANTZ. Yes; every major city in California right now does, except for Oakland, which has one we are working out.

Senator STEVENS. That is good. That is very good. We are hopeful that we can follow your lead.

Thank you very much for the time you have dedicated to this.

Mr. GLANTZ. Thank you.

[Mr. Glantz's prepared statement with attachments follows:]

Written Testimony of

STANTON A. GLANTZ, PH.D.

Associate Professor of Medicine
University of California
San Francisco, CA 94143

President
Californians for Nonsmokers' Rights
2054 University Avenue, Suite 500
Berkeley, CA 94704

Submitted to the

Subcommittee on Civil Service, Post Office, and General Services
Committee on Governmental Affairs
United States Senate

For Hearing on S.1440
The Non-Smokers Rights Act of 1985

September 30, 1985

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My name is Stanton A Glantz. I hold a PhD in Engineering and Economics from Stanford University and am now an Associate Professor of Medicine and Chairman of the Bioengineering Graduate Program at the University of California, San Francisco, where I conduct research into the mechanical function of the heart. I am also President of Californians for Nonsmokers' Rights, an organization that has helped to pass legislation protecting nonsmokers from the toxic chemicals in second-hand cigarette smoke in 44 California communities, encompassing approximately 9 million people.

Before discussing the specifics of our experience with legislation in California, I would like to speak briefly to two important general issues: the need for such legislation to protect the public health and the fact that the only organized opposition to such legislation comes from the tobacco industry.

First, there is absolutely no question that, as the National Academy of Sciences concluded in 1981, "involuntary exposure to tobacco smoke has adverse health effects and ought to be minimized or avoided where possible." There are over 600 papers in the medical literature on the effects of involuntary smoking supporting this conclusion.

As with primary smoking, the tobacco industry has tried to diffuse this overwhelming case by taking advantage of honest differences of opinion in the scientific community on the precise magnitude of the problem, misrepresenting the views of reputable scientists, or hiring professional quibblers to claim that "the case is not in." After every independent scientific body that addressed the question concluded that involuntary smoking represented a health hazard, the industry took the creative step of convening its own scientific panels -- in such scientifically impressive places as Geneva and Vienna -- in an effort to cast an aura of respectability on its position. Contrary to what the industry had hoped,

scientists at both meetings presented evidence that involuntary smoking was harmful. As a result the tobacco industry was reduced to quoting from press releases issued after the meetings by individuals. In contrast to statements made by the National Academy of Sciences and Surgeon General, these releases were not subject to any scientific quality control. As a result the only people that seem to take them seriously are the cigarette companies and their advertising agencies.

The simple fact is that one need not hold a PhD and own complex scientific equipment to know that second hand tobacco smoke is a serious form of indoor air pollution. Consider a room where people are smoking. Think about what the air looks like, what it smells like, what it tastes like. Consider the fact that your eyes or throat may burn, or that you may develop nausea, or a headache. If you went outdoors and the air was that polluted, you would be outraged. And you would be right.

That is why we have passed legislation cleaning up the outdoor air, and why this bill is necessary to help clean up the air indoors, where most Federal workers spend most of their time.

My involvement in this issue dates to 1978 when I worked with others in an unsuccessful attempt to pass, by initiative, the California Clean Indoor Air Act which would have created nonsmoking sections in the workplace and public places. Before the campaign started, every poll conducted (including those done for the Tobacco Institute) showed the initiative passing by a 3-1 majority. The cigarette companies spent \$6,500,000 on a massive advertising campaign and defeated the law. The tobacco industry represented to only organized opposition we faced.

The same thing happened again in 1980.

In 1981, we began working at the state and local level to pass

nonsmoker protection ordinances. We believed that, since the tobacco industry had no real support, informed and organized local constituents could overcome the pressure of lobbyists, lawyers and campaign contributions.

This strategy has proven successful. As of this date, every California community that has considered a law protecting nonsmoker in the workplace has enacted it, despite vigorous, well-financed opposition from the tobacco industry.

The industry's failure to stop us and other like-minded groups around the country has led them to another strategy: they are attempting to shift the field of play back to the ballot box where they hope they can buy elections with slick advertising campaigns. Fortunately, the American public has not been tricked by their efforts. In addition to the industry's highly-publicized \$1.3 million effort to get the San Francisco Workplace Smoking Ordinance repealed two years ago, their front groups have been rejected by the voters in Arizona and Colorado. This willingness of the populace to stand up to the industry attests to the importance and popularity of protecting nonsmokers from second hand smoke.

In fact, our success is not surprising, given that every poll done on the subject (including those done for the Tobacco Institute) have shown a majority -- including a majority of smokers -- in favor of legislation to protect nonsmokers.

This overwhelming consensus about the desirability of protecting nonsmokers is why legislation such as that before you is easy to impliment and enforce. It essentially codifies a change in social attitudes that has already occurred.

Given this broad consensus, why do we need laws? Why can't we depend on "common courtesy" as the ciagarette companies suggest? Because "common

courtesy" is a recipe for individual confrontation. Under the current situation, individual nonsmokers are forced to confront individual smokers to ask that they smoke elsewhere. Most people are simply not that aggressive.

Furthermore, the ubiquity of cigarette advertising and second hand cigarette smoke in the air, nonsmokers feel very isolated and are often afraid to speak up. The presence of a simple "No Smoking" sign dramatically changes this situation. With the sign available, nonsmokers feel comfortable in asking people not to smoke.

Let me give you an example. Several years ago I was sitting in the Minneapolis airport enjoying the benefits of the Minnesota Clean Indoor Air Act which was passed in 1987. A man then sat down next to me and began to take out a cigarette. I asked him not to smoke. He initially objected to my intrusion, until I pointed out that we were in a nonsmoking area. He then apologized and put the cigarette away. Surprisingly enough, he did not move to the smoking section. He simply smoked one less cigarette.

That was one less cigarette that a tobacco company sold. To understand the impact of that simple act consider this: If every smoker in America smoked just one less cigarette a day due to changing social attitudes or legal restrictions, there would be 22 billion fewer cigarettes sold each year.

Given these stakes, it is not surprising that the tobacco companies are willing to spend a few million dollars in their unsuccessful attempts to convince Americans that smokers should be free to pollute the indoor air without restriction.

Despite dire predictions of earthquakes in San Francisco and fires in Los Angeles, California, every ordinance I know of has gone into force

smoothly.

No city or county that has ever passed an ordinance has weakened or repealed it.

While it is important that there be strong enforcement provisions in the law to ensure that people take it seriously, there has never, to my knowledge, been the need to fine anyone. Enforcement has taken the form of education and negotiation, with legal sanctions playing a quiet but secondary role to back up the negotiations.

In sum, there are four simple principles that lead to successful, trouble-free nonsmokers' rights legislation:

- (1) There need to be signs posted in the nonsmoking areas.
- (2) There needs to be the capacity for strong enforcement; ironically, the presence of sanctions avoids the need for using them.
- (3) There needs to be a clear statement that the right to breathe clean air takes precedence over the choice to smoke.

The existing bill meets the first two criteria; to meet the third criterion, I suggest that the following language be added at page 3 line 9 after "government buildings": "provided, however, that in any dispute arising under such rules and regulations, the needs of nonsmokers shall be given precedence;"

I have no doubt that passage of the legislation before you will quickly, simply and inexpensively clear the air for Federal employees. It will also help encourage other public and private employers to follow your lead and produce a safer and healthier environment for all of us.

Thank you.

Attachments:

"San Francisco Anti-Smoking Law a Success", Wall Street Journal, August 15, 1984

Letter from Surgeon General Koop regarding the health effects of involuntary smoking

Letters from city, county, and state officials regarding ease of enforcement of various ordinances:

John Lockwood, Assistant City Manager, San Diego

Roger Hedgecock, Mayor, San Diego

George Story, Director, Citizens Assistance & Information, San Diego

James Forde, Director, Department of Health Services, San Diego County

Bruce Tsutsi, Inspector, Department of Public Health, San Francisco

Rita Hardin, Director, Neighborhood Preservation, San Jose

C. B. Schneider, Chief, Section of Environmental Field Services, Minnesota department of Health

Letter from Art Pick, Executive Vice President, Greater Riverside Chambers of Commerce, endorsing a proposed ordinance (which passed)

San Francisco Anti-Smoking Law a Success

By Scott D. SCHUM
Staff Reporter of The Wall Street Journal

SAN FRANCISCO—The toughest anti-smoking law in any major U.S. city is five months old—and to everyone's surprise, it seems to be working nicely.

The law went into effect March 1, amid predictions of disrupted worker relations, acrimonious litigation and outright rebellion. But the city's health department, charged with enforcing the ordinance, reports only about 50 complaints, about eight of which are still unresolved.

"We had hoped for the most part it would be self-enforcing, and it's been going that way," says Bruce Tsutsui, the inspector who handles the complaints.

The law has prompted just one legal challenge, a suit filed by Claudia Marshall seeking \$100,000 and lost wages because she was allegedly fired 30 minutes after requesting in writing that her supervisor stop smoking. The defense will claim Ms. Marshall was fired for other reasons, and if the court agrees, the law's constitutionality will remain unchallenged.

A year ago, civil harmony seemed unlikely. In June 1983, after the bill had been passed but before it took effect, a pre-smoking committee began a drive to put the issue on the November ballot. San Franciscans Against Government Intrusion collected some 48,000 signatures, more than twice the amount necessary. The tobacco industry

contributed more than \$1.2 million to the committee's campaign. As it turned out, voters approved the ordinance by less than 1%.

The law requires employers to write a smoking policy that allows a nonsmoker to object about smoke in the workplace to the employer. Employers served with an objection must try to find an acceptable solution. However, if the nonsmoker remains dissatisfied, smoking must be banned. The only exemptions are for private home offices, federal and state employees, independent contractors' offices and enclosed offices occupied solely by smokers. The maximum fine for noncompliance is \$500 a day.

Most companies posted policies modeled after the law. Pacific Telesis and Wells Fargo (Bank) & Co. extended their policies statewide. Bechtel Group Inc. and Chevron Corp., among others, provided "no smoking" signs for employees. Others bought air purifiers (Del Monte Corp., which employs about 1,200 in San Francisco, bought 125 such devices).

"Our experience has been that it hasn't been very difficult to implement," says Clark Kerr, vice president of corporate health programs for BankAmerica Corp., which instituted its policy in January.

Most of the complaints came in March (25) and April (18), but now it's "one or two a week," says Mr. Tsutsui, who says he spends only eight hours a week or less on them.

Disgruntled smokers still exist. Some can

be found at a Pacific Telesis sales development center with 90 employees. The center was declared nonsmoking after a complaint to the health department, and now smoking is permitted only in a small break room. "I was quite upset because it is a communist type of approach," says Lee Chandler, an assistant manager. During the day he smokes less, he says, but, "if anything, it's made me unhealthier because I pack them away at night."

At Chevron Corp., 18 of 20 workers in the economics department were shuffled to create a smoking corner for the department's three smokers. It delights Marilyn Schwenger, who is allergic to the smoke.

As for Dennis M. Paynter, a smoker, he says the arrangement is fine and hasn't changed his habits—or his nonsmoking colleagues' propensity to come to him for help.

It's not yet clear whether the law has reduced overall smoking as many of its proponents hoped. The American Lung Association of San Francisco, which helps companies set up their policies, reports that since the ordinance, phone inquiries and cessation program enrollment have increased about 30%.

City officials are answering queries from cities around the world. Board of Supervisors President Wendy Weider, who sponsored the law, thinks the tobacco industry feared that that might happen. "They know," she says, "that everyone watches San Francisco."



DEPARTMENT OF HEALTH & HUMAN SERVICES

FEB 15 1985

The Surgeon General of the
Public Health Service
Rockville MD 20857

Stanton A. Glantz, Ph.D.
President, Californians for
Nonsmokers' Rights
2054 University Avenue, Suite 500
Berkeley, CA 94704

Dear Stan:

You asked me to summarize for your members what we know about the dangers of involuntary, or passive, smoking to nonsmokers.

There is all the medical evidence necessary to support reasonable and sensible protection for the nonsmoker against the irritation and potential harm that comes from other people's smoke.

The harmful constituents of mainstream cigarette smoke are found in sidestream smoke, sometimes to a greater extent than in mainstream smoke.

Pollution from tobacco smoke in homes, offices, other worksites and in certain public places can reach levels which exceed contaminant levels permitted under environmental and occupational health regulations.

Nonsmokers absorb the constituents of tobacco smoke into their bodies, even though in smaller amounts than is true of those who smoke.

Passive smoking can make the symptoms of asthma and chronic bronchitis worse, and make life miserable for people with allergic conditions.

Maternal smoking has a harmful effect on pregnancy, including an increased risk of miscarriage, prematurity, stillbirth, death soon after birth, low birth weight and fetal death.

There is increasing evidence to suggest that environmental tobacco smoke can bring about disease, including lung cancer, in healthy adults, children and infants.

It is on the basis of these facts that I advise nonsmokers to avoid exposure to cigarette smoke wherever possible, and that, in particular, they should protect infants and children from this smoke.

Californians for Nonsmokers' Rights has done outstanding work in not only bringing these dangers to the public's attention, but also in helping to pass legislation and creating educational programs that will help us reach the goal of a Smoke Free Society by the Year 2000.

Keep up the good work.

Sincerely yours,


C. Everett Koop, M.D.
Surgeon General

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The City of San Diego

MANAGER'S REPORT

INFORMATION

DATE ISSUED: January 20, 1984

REPORT NO. 84-19

SUBJECT: NON-SMOKING ORDINANCE

A City ordinance regulating smoking in indoor public places has been in effect since January, 1975. It was amended extensively to broaden its coverage in 1982 with the assistance of an ad hoc committee. Of these amendments, those related to "indoor public places" took effect in January of 1983, and those pertaining to indoor "places of employment" will become effective July 1, 1984.

The ordinance now covers virtually all retail sales and service establishments, cultural institutions, public conveyances, health care facilities, food marketing establishments and restaurants (where smoking sections are allowed), and it requires the posting of advisory signs so the public will be aware where smoking is permitted and where it is not.

Californians for Nonsmokers' Rights and the Lung Association of San Diego and Imperial Counties have supplied numerous signs free of charge to establishments upon request. This public service has been highly beneficial to the City and deserves to be acknowledged at this time. It has been our experience that a high percentage of smokers will comply voluntarily with reasonable regulations and prominent signing, and this principle has been the focal point of the City's efforts to promote public awareness and to seek voluntary compliance and cooperation rather than to prosecute violations, except as a last resort.

We have coordinated other public information efforts with the County Sheriff's Office and the Department of Health Services and have shared with the County the cost of preparing, printing and distributing informational brochures. The Restaurant Association, as well as the Lung Association and Californians for Nonsmokers' Rights, have been most cooperative and helpful in assisting us with the public awareness campaign.

During 1983, we received and responded to 313 complaints involving 389 establishments and answered 271 inquiries regarding the ordinance. We have also mailed information to commercial centers and civic organizations for distribution to hundreds of small businesses.

The Director of Citizens Assistance & Information has talked personally with representatives of approximately 170 establishments covered by the ordinance, the

large percentage of whom represent small businesses. (Of the total number of complaints, 60% concerned restaurants and 36% retail sales and service establishments.)

It is our experience that businesses have been willing to cooperate and have made sincere efforts to do so and that they are appreciative of the emphasis on public awareness and voluntary compliance. However, they have been warned that failure to make a reasonable effort to comply will result in referral to the City Prosecutor's office.

In preparing this report, we requested comments on the business community's opinions of the impact of the ordinance from the Chamber of Commerce, the Restaurant Association, the Hotel-Motel Association and the United Federation of Small Businesses. If additional comments are received prior to the Committee meeting, we will share them with you. The only written response has been from the Restaurant Association. The Association states, "We have heard very little, good or bad, about the non-smoking ordinance over the past several months, which leads us to conclude that non-smokers and restaurants have come to terms with the new system and are handling problems informally..."

This is especially encouraging since (a) as noted above, 60% of our complaints pertain to restaurants, and (b) we have mailed out about 300 copies of the Restaurant Association's highly supportive letter.

Otherwise, of the many calls we have received, we are aware of none alleging that the ordinance or the administration of it works an unreasonable hardship on business in San Diego.

We believe that San Diego has achieved some measure of recognition in this regard as we have been asked for advice by several other cities in San Diego County and beyond. We have worked closely with Californians for Nonsmokers' Rights, which originally proposed the stronger regulations, and we believe our programs have this organization's full endorsement and support.

Within a few days, a report will be issued discussing the City's experience with restrictions on smoking in indoor "places of employment" as directed by the Public Services & Safety Committee on October 13, 1982. The City Council expressed an interest in reviewing the City's experience before the effective date of the regulations pertaining to all indoor work places, which provision will go into effect as mentioned above this July 1.

Respectfully submitted,

JOSH LOCKWOOD
Assistant City Manager

STORY



ROGER HEDGECOCK
MAYOR

December 4, 1984

Honorable Harriet M. Wieder, Chairperson
and Members of the Orange County Board of Supervisors
P. O. Box 678
Santa Ana, CA 92702-0687

Dear Ms. Wieder and Members of Board of Supervisors:

I understand you will soon be discussing an ordinance regulating smoking in indoor public places and places of employment. Our Office of Citizens Assistance is forwarding, under separate cover, copies of the City of San Diego's ordinance and background material to Robert Thomas, your Chief Administrative Officer.

We have concentrated our efforts on public awareness and voluntary compliance and have enjoyed the cooperation of the business community which assisted us in drafting our ordinance. The County of San Diego and most of the cities within the County have adopted similar legislation, and this has enhanced our efforts in awareness and compliance.

I am convinced that such legislation promotes a more healthful environment and makes a city a nicer place to live.

Sincerely yours,

Roger Hedgecock
ROGER HEDGECOCK
Mayor, City of San Diego

RH:jg

cc: Merrill J. Matchett
1634 Jeffrey Drive, #7
Anaheim, CA 92802

Howard Mitchell, President
Californians for Nonsmokers' Rights
P. O. Box 99511
San Diego, CA 92109



THE CITY OF
SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIFORNIA • 92101-3873

DEPARTMENT OF
CITIZENS ASSISTANCE AND INFORMATION
(619) 236-6047

December 3, 1984

Mr. Robert E. Thomas
Chief Administrative Officer
County of Orange
10 Civic Center Plaza
Santa Ana, CA 92701

Dear Mr. Thomas:

Howard Mitchell, who has been very successful working with local governmental agencies in the San Diego region toward the adoption of legislation regulating smoking in indoor public places and places of employment, suggested to me that it might be useful to your office to have some information from the City of San Diego on how we have attempted to implement our municipal ordinance pertaining to smoking.

I am taking the liberty of enclosing a copy of the San Diego City ordinance, which you probably already have, plus some brochures and correspondence and City Manager's Reports which you might find useful.

We have concentrated our efforts on public awareness and voluntary compliance, and that is why the assignment was given to the Department of Citizens Assistance & Information instead of a law-enforcement agency.

We have enjoyed the cooperation of the business community, which worked with us toward an ordinance which we felt represented a reasonable compromise. After helping us draft such an ordinance, the various organizations in the business community have assisted us with the implementation. The County of San Diego and most of the cities within the County have adopted legislation which is virtually identical with the San Diego ordinance, and this, of course, has enhanced our ability to help the public understand what the law requires.

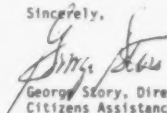
We have experienced excellent cooperation with very little law-enforcement rhetoric being employed. We have exhibited tolerance to give the private sector time to understand and work with the

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ordinance and, by the same token, the organizations in the community which are dedicated to protecting the rights of nonsmokers have worked with us in this regard and have not demanded that we take a law-enforcement posture.

I sincerely hope that you will find the enclosed material helpful, and I would be glad to answer any specific questions which you might have.

Sincerely,



George Story, Director
Citizens Assistance & Information

GS:pc

cc: ☒ Merrill J. Matchett
1634 Jeffrey Drive, #7
Anaheim, CA 92802

Howard Mitchell, President
Californians For Nonsmokers' Rights
San Diego Affiliate
P.O. Box 99511
San Diego, CA 92109

Attachments

bcc: Merrill J. Matchett ✓



COUNTY OF SAN DIEGO

DEPARTMENT OF HEALTH SERVICES

1700 Pacific Highway, San Diego, CA 92101

JAMES A. FORDE, Director



(619) 236-2237

December 13, 1984

Robert Love, Acting Director
Orange County Health Care Agency
515 N. Spicamore
Santa Ana, CA 92701

Dear Mr. Love:

We understand your Board is considering adopting a smoking ordinance similar to our ordinance in San Diego County. We certainly encourage your efforts.

Our ordinance prohibits smoking in public places and places of employment except in designated areas. The work site provision of the Ordinance went into effect July 1, 1984. Six workshops, sponsored by the County of San Diego Department of Health Services, the City of San Diego, the American Lung Association, the American Heart Association, the UCSD Cancer Center, and the American Cancer Society, were conducted at various locations within the San Diego area. The workshops were designed to inform employees about the No-Smoking-At-The-Workplace Ordinance, including who is affected by it, how to implement it, how to resolve problems arising from implementation, and community sources of help. Both employers and employees alike, as well as smokers and non-smokers, welcome the opportunity to work together toward achieving full compliance with the Ordinance.

In addition to restricting smoking at the work site, the Ordinance also pertains to indoor public places. Public place means any enclosed area to which the public is invited or permitted. This includes for example, retail stores, retail service establishments, retail food production and marketing establishments, and restaurants.

San Diego County's Ordinance requires restaurants with a seating capacity of 20 or more to provide a non-smoking section of sufficient capacity to accommodate requests. In addition, patrons must be informed that non-smoking seating is available. This is

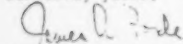
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an important issue to most members of the public. In fact, the majority of the complaints we receive have to do with restaurants violating this provision of the Ordinance. These complaints have been resolved quickly and voluntarily.

The ordinance's aim is voluntary compliance. In addition to receiving complaints on restaurants, we have received complaints regarding retail stores and alleged work site provision violations. These complaints continue to be resolved easily by informing appropriate individuals about their responsibilities under the ordinance.

We encourage your efforts to pass a similar ordinance. If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,



JAMES A. FORDE, Director
Department of Health Services

JAF:EG:isl

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH
INTER-OFFICE MEMORANDUM

May 16, 1985

Bruce Tsutsui

David Werdegarr, M.D., M.P.H.
Director of Health

Subject: Smoking Ordinance-Status
report on implementation
of enforcement and effectiveness.

Jack E. Coyne, R.S., M.P.H.
Director, Bureau of Environmental Health Services

As requested, the following report has been prepared which summarizes the activity experienced by the Bureau of Environmental Health Services in enforcing Article 19 of the San Francisco Health Code, known as the Smoking Pollution Control Ordinance.

Enforcement activity began on March 1, 1984. At that time, complaints and special requests were officially received and logged. A general outline of the procedure utilized for the enforcement of the ordinance is as follows:

1. Investigations are made solely on the basis of complaints from affected non-smoking employees. No anonymous complaints can be accepted. The complainant's identity, however, is not disclosed to the employer by the inspector conducting the investigation.
2. After receipt of a complaint, an inspection of the employee's workplace is conducted. Inspection is made to determine the validity of the complaint, and whether or not a written smoking policy has been adopted and implemented. At this time, all discussion is with the employee's supervisor or office manager. The employee is not approached during on-site inspections so as to maintain confidentiality.
3. Possible accommodations for affected non-smoking employees are discussed with the office manager, and later presented to the complainant by telephone.
4. When an acceptable accommodation is agreed upon, the employer is given written notice to comply. The time allotted for compliance is fifteen days.
5. If the employer is not in compliance at the end of this time period, a citation is issued. This requires the employer to appear at an Administrative Abatement Hearing before the Director of the Bureau of Environmental Health Services.
6. At the hearing, the employer may be granted additional time to achieve compliance. Any extensions given are at the discretion of the Bureau Director, and will not exceed fifteen additional days.

7. If the employer is not in compliance at the end of this (second) time period, the case is referred to the Office of the City Attorney. The City Attorney may obtain an injunction to enforce the provisions of the ordinance, or initiate civil action against the employer.

Response to enforcement of the ordinance has been excellent. Only 143 complaints have been received from March 1, 1984 to May 14, 1985. Eleven complaints are currently under investigation, and the remainder have been abated. In only one instance has it been necessary to hold an abatement hearing for non-compliance, and no cases have had to be referred to the office of the City Attorney for further action.

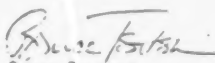
The monthly tally of complaints received is as follows:

(1984)	March	- 25	August	- 11
	April	- 15	September	- 6
	May	- 7	October	- 13
	June	- 7	November	- 9
	July	- 6	December	- 2
(1985)	January	- 9	April	- 3
	February	- 13	May	- 6 (through May 15)
	March	- 10		

Initial manpower requirements entailed the use of one inspector on a full-time basis in order to handle the large number of requests for information and complaints. The amount of time spent on matters related to the Smoking Ordinance has gradually declined to a current level of approximately one day per week.

The only measurable parameter from which an assessment of the effectiveness of the implementation of the Smoking Ordinance can be made is the number of complaints received by this Bureau. Complaints have been received on an average of approximately ten per month. This is a very low volume, and it can be assumed from this data that the implementation of the Smoking Ordinance in San Francisco has been very successful. It is believed that the success in implementing this ordinance has been in large part due to the extensive publicity given by the media. Written requests for information have been received from as far away as Norway, England and Japan, as well as from many other areas of this country. Telephone requests are now answered routinely and are not logged.

There is no indication that the current status of activity will change in the future.


 Bruce Tsutsui
 Inspector, Central Office

BT:ag



CITY OF SAN JOSE, CALIFORNIA

101 NORTH FIRST STREET, ROOM 300
SAN JOSE, CALIFORNIA 95110

DEPARTMENT OF
NEIGHBORHOOD PRESERVATION

August 16, 1985

Ms. Sylvia Jutila, Chairperson
American Cancer Society
Humboldt-Dei Norte Unit
2107 Harrison Ave.
Eureka, CA 95501

Dear Ms. Jutila:

This is in response to your letter of July 22, 1985 requesting the City of San Jose's experience relative to enforcement of its smoking regulations.

The City has adopted several Smoking Ordinances since October 1980 as follows:

<u>Date of Adoption</u>	<u>Description</u>
October 14, 1980	Prohibited smoking in elevators, public health facilities, theaters, auditoriums, pavilions, retail stores, eating establishments and required the posting of "No Smoking" signs in all areas covered by the ordinance.
June 9, 1981	Amended previous ordinance to exclude cocktail lounges and bars, excluded eating establishments having an occupied capacity of less than 100, and required that 30% of an eating establishment's floor area be provided.
November 27, 1984	Required employers to establish and maintain a smoking policy in workplaces.

The following are answers to the questions posed in your letter of July 22, 1985:

1. The Department of Neighborhood Preservation's Code Compliance Division enforces the City's Smoking Ordinance on a complaint basis only. Due to limited staff resources, complaints are handled by mailing form notices to alleged violators (see attached notice). If the complainants report that the notices have not achieved compliance, infraction citations may be issued to violators.
2. Enforcement costs have been minimal since most complaint response is a clerical function. It is estimated that the smoking regulations have cost the City less than \$80.00 per month.
3. The population of San Jose is approximately 700,000.

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4. Adoption of the City's smoking regulations resulted in surprisingly few actual complaints. With adoption of the June 9, 1981 ordinance, our Code Compliance Division received seven complaints in the first six months. In all of 1982, 24 complaints were received (all from a single complainant). In 1983, a total of six complaints were received.

The Code Compliance Division experienced an increase in number of inquiries and complaints with adoption of the November 27, 1984 ordinance. In the first month, approximately 50 complaints and 150 inquiries were received. The Code Compliance Division, in subsequent months, routinely receives about five complaints per month.

5. The Code Compliance Division anticipated heavy public response upon adoption of San Jose's Smoking Ordinances and took steps to deal with the expected onslaught. The ordinances received heavy news media coverage intended to inform the public of the provisions of the ordinance, penalties for non-compliance, etc. The entire Code Compliance staff of 28 persons was briefed on how to deal with calls and the field staff was directed to remain in the office. The expected crush of calls never materialized and the staff returned to normal duties.

The prepared notices have proven very effective in dealing with complaints and our informational pamphlets (copy attached) effectively respond to inquiries. The Code Compliance Division has, to date, had to issue only one citation for non-compliance.

6. After the initial increased activity upon adoption of our smoking regulations, the number of complaints and inquiries quickly leveled off and do not now constitute a significant workload.
7. The San Jose City Attorney's Office has not rendered an opinion relating to the smoking regulations.

I hope that your questions have been answered sufficiently for your needs. If you have further questions, please feel free to contact Mr. Douglas G. Barlow, Chief, Code Compliance Division, at (408) 277-4527.

Sincerely,

Rita Hardin

RITA HARDIN, Director
Neighborhood Preservation

RH/DGB/aky

Enclosures

cc: Les White

Chapter 9.64 REGULATION OF SMOKING.

Section:

9.64.070 Findings.

9.64.080 Definitions.

9.64.090 Public meetings.

9.64.100 Health facilities.

9.64.110 Theaters, auditoriums, parlors and exposition halls.

9.64.120 Retail stores.

9.64.130 Eating establishments.

9.64.140 Posting of signs.

9.64.150 Enforcement — Health officer authority.

9.64.160 Regulation of Smoking in the workplace.

9.64.070 Findings. The city council of the city of San Jose finds and declares that smoke from pipes, cigars, and cigarettes is a highly offensive and severe nuisance to nonsmoking individuals. In enacting this chapter the city council is also aware of substantial medical evidence indicating that inhalation of tobacco smoke can endanger the health of nonsmokers. (Added by Ord. 20364.)

9.64.080 Definitions.

Except where the context otherwise requires the definitions hereinafter set forth govern the construction of this Chapter 9.64. A "smoke" or "smoking" means and includes the combustion of any lighted pipe, or lighted cigar or lighter, cigarette of any kind or the lighting of a pipe, cigar, or a cigarette of any kind or any similar article or any other combustible substance in any manner or in any form.

A "bar" and/or "cocktail lounge" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

C "Employer" means any person who hires the services of an individual person for compensation for services to be rendered in the workplace.

D "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

E "Workplace" means any enclosed area of a structure or portion thereof intended for occupancy by business entities excluding health facilities, theaters, auditoriums, parlors, exposition halls, retail stores and eating establishments. Workplace includes, but is not limited to, office spaces in office buildings, research and development facilities and manufacturing facilities.

F "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

G "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress

and is not bounded to mean areas commonly designated as public tobacco.

(Added by Ord. 20364. Amended by Ord. 20623, amended by Ord. 21638.)

9.64.090 Sitings.

Smoking is prohibited within elevators in buildings generally used by and open to the public. (Added by Ord. 20364.)

9.64.100 Public meetings.

Within indoor rooms, indoor chambers or indoor places of public assembly during public meetings smoking is prohibited. A public meeting is deemed to be any occasion in which public business is conducted by any elected or appointed official committee, commission or board under circumstances requiring or permitting direct participation or observation by the general public. (Added by Ord. 20364.)

9.64.110 Health facilities.

Smoking in all publicly or privately owned "health" facilities as the term is defined in Section 1750 of the California Health and Safety Code is prohibited in public areas of such facilities, including waiting rooms, hallways and lobbies except where special smoking areas have been designated by signs in such space areas. Within such facilities, visited for two or more patients smoking by any person other than a patient assigned to such area is prohibited. Smoking by patients within such a bed space area is permitted only in bed space areas occupied solely by smokers. (Added by Ord. 20364.)

9.64.120 Theaters, auditoriums, parlors and exposition halls.

Smoking is prohibited within these indoor rooms, indoor chambers and indoor places of assembly in which any motion picture, stage drama, musical recital, lecture, athletic event, closed circuit television or other performance is held or conducted when open to the general public and when being so used, except that:

A This prohibition shall not apply to performers when smoking is part of the performance.

B If such indoor room, chamber or place is also an eating establishment within the meaning of Section 9.64.080 only the restrictions applicable to such eating establishments shall apply.

C If alcoholic beverages including beer, are served in accordance with the state alcoholic beverage license laws within said indoor room, chamber or place during such a performance and such place is not an eating establishment, the restrictions contained in this section shall be inapplicable. (Added by Ord. 20364.)

9.64.130 Retail stores.

Smoking is prohibited within retail stores doing business with the general public when open to the general

public except within areas in said stores not open to the public and except retail tobacco shops. (Added by Ord. 20364.)

9.64.140 Eating establishments.

Smoking is prohibited within every publicly or privately owned indoor coffee shop, cafeteria, short-order cafe, luncheonette, soda fountain or other indoor eating establishment serving food to the general public whose occupied capacity is one hundred or more persons. However, this prohibition shall not apply within such establishments in which there is maintained, a contiguous no-smoking area of not less than thirty percent of the seating capacity and of the floor space in which customers are served.

Provided further, that the minimum no-smoking area may, at the discretion of the owner or his designee, be increased if the owner or his designee determines from the preference of his patrons that a no-smoking area greater than thirty percent is desired by such patrons. The owner or his designee must ask such patrons for his or her preference. The prohibitions, requirements or duties of this chapter shall not apply to banquet rooms in use for private functions or to cocktail lounges or bars. (Added by Ord. 20364. Amended by Ord. 20623.)

9.64.150 Posting of signs.

No-smoking signs shall be conspicuously posted in every room, building, place or designated area where smoking is prohibited pursuant to this chapter. By the owner, operator, manager or other person having control of such room, building or other place, such person shall also post signs conspicuously in the lobby of the building, facility or place in which a meeting room, theater, auditorium or pavilion or exposition hall or other room or space in which smoking is prohibited is located indicating that smoking is not allowed within such room or space. Additionally, movie theaters shall indicate on the movie screen prior to each feature motion picture that smoking is prohibited. (Added by Ord. 20364.)

9.64.160 Enforcement — Health officer authority.

The health officer and any employee of city's department of neighborhood preservation authorized by the health officer to do so

shall enforce the provisions of said provisions. In the enforcement of said provisions, they shall have and are hereby vested with the power and authority of a peace officer but shall not be deemed to be members of the police department. (Added by Ord. 20623.)

9.64.170 Regulation of Smoking in the workplace.

A The effective date of this ordinance shall be January 15, 1985, and

each employer shall adopt, implement, and maintain a written smoking policy relating to smoking in the workplace which shall contain as a minimum the following:

1. Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, nurseries, medical facilities, hallways, and elevators.

2. Prohibition and maintenance of a contiguous no smoking area of not less than two-thirds of the seating capacity and floor space in each cafeteria or lunchroom.

3. Prohibition and maintenance of a contiguous no smoking area of not less than two-thirds of the seating capacity and floor space in each employee lounge or, at the discretion of the employer, where there is more than one such lounge in any one building, not less than one-half the number of such lounges and not less than one-half the square footage of such lounges.

4. Any employee in the workplace shall be given the right to designate his or her immediate area as a non-smoking area and to post it with appropriate signs or signs. The policy adopted by the employer shall include a definition of the term immediate work area which given preferential consideration to nonsmokers.

5. In any dispute arising under the smoking policy, the rights of the nonsmoker shall be given precedence.

6. Whenever smoking is prohibited, conspicuous signs shall be posted either by stating, containing lettering not less than one inch in height on a contrasting background or displaying the international no smoking symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. State law may require additional information to be placed on the sign.

7. The smoking policy shall be communicated to all employees by February 5, 1985.

8. Notwithstanding the provisions of subsection (a) of this section, every employer shall have the right to designate any area in the workplace as a non-smoking area.

9. This section is not intended to regulate smoking in the following places and under the following conditions:

1. A private home which may serve as a workplace.

2. Any property owned or leased by other governmental agencies.

3. A private enclosed workplace occupied exclusively by smokers, even though such a workplace may be visited by nonsmokers, occupying places in which smoking is prohibited by the State Fire Marshal or by other law, ordinance, or regulation. (Added by Ord. 21638.)



minnesota department of health

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September 26, 1983

Dr. Raymond Weisberg, President
 San Franciscans for Local Control
 4690 - 18th Street
 San Francisco, CA 94114

Dear Dr. Weisberg:

The Minnesota Clean Indoor Air Act, Minnesota Statutes Section 144.417, was enacted in 1975 to protect the public health by prohibiting smoking in public places except in designated smoking areas. A public place was specifically defined to include a place of work. Since 1975, I have been employed in the Minnesota Department of Health as Section Chief, Environmental Field Services, with responsibility for implementation and enforcement of the MCIAA. You have asked me to describe how the public has received the law since its enactment eight years ago.

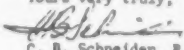
In general, it is my opinion that there has been broad acceptance of the law among employers. The Minnesota Department of Health has been receiving an average of about 137 complaints per year from nonsmoking employees involving alleged workplace violations. Virtually all of these complaints have been resolved satisfactorily through correspondence and discussions between Department personnel, the employer and the employee. To my knowledge there have been no lawsuits involving workplace violations. Also, I know of no grievance proceedings which have arisen under labor contracts because of the application of the law to the workplace.

The most recent poll (May, 1980) indicated that the MCIAA is approved by 92% of all Minnesota adults, including nonsmokers and smokers.

My experience as the principal enforcement officer of the Minnesota Department of Health is consistent with the poll. I believe that the law has resulted in significant progress in protecting nonsmokers from ambient tobacco smoke at the workplace, without an undue hardship on employers and smoking employees. This has been achieved with minimum governmental intervention and at no additional public tax cost.

If I can be of further service to you, please feel free to contact me.

Yours very truly,


 C. B. Schneider, R.S., Chief
 Section of Environmental Field Services

Enc.

an equal opportunity employer

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Greater Riverside Chambers of Commerce

Arlington • La Sierra • Riverside • Woodcrest • De Anza Country • Magnolia Center
4261 Main Street, Riverside, California 92501 (714) 683-7100

May 3, 1985

Patricia Larson, Chairman
Riverside County Board of Supervisors
4080 Lemon Street, 14th Floor
Riverside, CA 92501

Dear Mrs. Larson:

The Greater Riverside Chambers of Commerce, the Lung Association of Riverside County and the California for Non-Smokers Rights recently went through lengthy process of advocacy and negotiation and compromise for the adoption of a Non-Smoking ordinance that would materially enhance the rights and health of non-smokers.

For the first time, to our knowledge, our three organizations agreed on the basic premise of the ordinance and that, it would be mandatory for every business organization to have a reasonable smoking policy, but each business would be allowed to tailor their own policy to benefit the non-smoker.

Other amendments were added by City Council at the request of Attorney Walt Ingalls. The Greater Riverside Chambers endorsed those amendments but neither the Lung Association or California for Non-Smokers Rights did not.

We would hope that the County of Riverside would adopt the exact same ordinance to encourage uniform compliance by those businesses that have businesses throughout the county.

If the County of Riverside concurs in this approach, the Greater Riverside Chambers of Commerce would be willing to promote its adoption of other Chambers of Commerce and cities throughout the county. We believe that if the County of Riverside adopts the Riverside Ordinance, it could become the leading county in California in protecting non-smokers rights.

Please schedule this on the May 21st Board of Supervisors agenda.

Sincerely,

Art Pick
Executive Vice President

c: Linda Morton

A-2 Saturday, September 28, 1985 ★

Fremont woman awarded \$45,000: secondhand smoke

By Sheilah Downey

OF THE EXAMINER STAFF

Irene Parodi spent more than five years and \$45,000 in attorneys fees trying to prove to the U.S. government that she contracted a disease from cigarette smoke in her government office.

In a decision that Parodi hopes may open doors for others, the U.S. Department of Labor finally agreed last week that Parodi had contracted a disease - called hypersensitive small airways - from secondhand cigarette smoke at her federal job.

"It affects my whole respiratory system," she said. "I get terrible headaches, I get hoarse; it hurts me to breathe. It restricts my breath."

Parodi was awarded five years' back pay from the Labor Department's Office of Workman's Compensation, ending a hard-fought battle with various federal agencies.

"It was very traumatic," she said. "It just plays on you. You never knew from day to day what was going to happen. We won, but they were fighting us all along the way."

The case goes back to 1977 when Parodi, now a 50-year-old Fremont woman, was transferred to the San Bruno office of the federal Defense Logistics Agency where approximately 60 co-workers smoked.

Two years of exposure to their smoke, she said, gave her symptoms of severe bronchitis and made her too sick to work.

"I developed hypersensitive small airways disease directly from smoking," she said. "When I was working, I was sick every day."

In June of 1979, Parodi went on leave without pay while she applied to federal agencies, the Office of Personnel Management and the Merit Systems Protection Board, for disability pay.

"They both turned me down saying I was not totally disabled," she said.

So Parodi hired an attorney and in the same year brought her case to the 9th U.S. Circuit Court of Appeals.

In October of 1982, the 9th Circuit ruled that Parodi could not be made to suffer the "secondhand smoke" of her co-workers. The ruling was considered a landmark for workers with allergies to smoke and those who may as yet undiagnosed victims of Parodi's illness.

While Parodi was eventually awarded \$50,000 in disability as a result of the ruling, all but \$5,000 went to her attorney.

In her recent fight for workman's compensation pay, Parodi asked Tom Raffin, assistant chief of medicine at the Stanford University Medical Center, to examine her to prove her case.

San Francisco Examiner



Examiner file photo

Irene Parodi proved breathing tobacco smoke made her sick

Raffin tested Parodi and reported that she had symptoms "obviously consistent with airways sensitive to cigarette smoke."

In the letter announcing her award, Labor Department Claims Examiner Quonnella Lee wrote "we are accepting that the hyper-sensitive small airway disease was caused by smoking at your place of employment."

After deducting for other expenses and awards, Parodi is expected to receive about \$80,000 in back pay.

Parodi's predicament — which drew considerable attention from

smoking and anti-smoking factions and landed her a spot on ABC's "Good Morning America" — is one which Supervisor Wendy Nelder used when discussing her anti-smoking ordinance.

Since the legal battles started, Parodi has received a number of requests for help from people who have the similar problem she has.

And while she is pleased that the case is finally settled, the money isn't the main thing on her mind.

"I have helped people before," she said, "and I hope to help more."

S. 1440 AS AMENDED BY DR. GLANTZ

99TH CONGRESS
1ST SESSION**S. 1440**

To restrict smoking in designated areas in all United States Government buildings.

IN THE SENATE OF THE UNITED STATES

JULY 16, 1985

Mr. STEVENS (for himself, Mr. GOLDWATER, Mr. MURKOWSKI, Mr. HATCH, Mr. PROXMIRE, and Mr. MATSUNAGA) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To restrict smoking in designated areas in all United States Government buildings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Non-Smokers Rights Act
4 of 1985".

FINDINGS

6 SEC. 2. The Congress finds that—

7 (1) numerous studies have shown second-hand
8 smoke to be a significant health hazard;

1 (2) recent court decisions recognize an emerging
2 right of employees to work in a smoke-free environ-
3 ment; and

4 (3) smoking results in increased costs to employ-
5 ers and the public in the form of more frequent absen-
6 teeism by employees who smoke and higher costs for
7 health insurance, fire insurance, life insurance, and
8 workers' compensation.

9 UNITED STATES GOVERNMENT BUILDINGS

10 SEC. 3. (a) Within 180 days after the date of enactment
11 of this Act and as provided in subsection (b)—

12 (1) the Administrator of the General Services Ad-
13 ministration shall prescribe and implement such reason-
14 able rules and regulations as may be necessary to des-
15 ignate smoking areas in any building under the juris-
16 diction and control of a department or agency of the
17 United States;

18 (2) the Committee on Rules and Administration of
19 the Senate and the Committee on House Administra-
20 tion of the House of Representatives shall prescribe
21 and implement such reasonable rules and regulations as
22 may be necessary to designate smoking areas in any
23 building under the jurisdiction and control of the Con-
24 gress; and

25 (3) the Administrator of the Administrative Office
26 of the United States Courts shall prescribe and imple-

1 ment such reasonable rules and regulations as may be
2 necessary to designate smoking areas in any building
3 under the jurisdiction and control of the judicial branch
4 of Government.

5 (b)(1) Rules and regulations for United States Govern-
6 ment buildings prescribed pursuant to subsection (a) shall—

7 * ~~(A) make reasonable accommodations for the~~
8 ~~needs of the smokers and nonsmokers who use the~~
9 ~~Government buildings; and~~

10 (C) ~~or~~ conspicuously display signs in each building
11 that specify the portions of the building in which smok-
12 ing is allowed by law and in which smoking is prohibit-
13 ed by law.

14 (2) A sign required by paragraph (1)(B) shall be at least
15 18 inches wide and 6 inches high, with lettering at least 1.25
16 inches high.

17 (c)(1) Whoever smokes in an area of a United States
18 Government building not designated as a smoking area pur-
19 suant to this section shall be subject to a civil fine of not less
20 than \$50 nor more than \$500.

21 (2) This subsection shall be effective 180 days after the
22 date of enactment of this Act.

* (A) make reasonable accommodations for the needs of the smokers and nonsmokers who use the government buildings provided, however, that in any dispute arising under such rules and regulations, the needs of nonsmokers shall be given precedence; and

(B) prescribe the following minimum requirements:

- (i) Any employee shall be given the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs;
- (ii) Provision and maintenance of a separate and contiguous nonsmoking area of not less than fifty percent (50%) of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate and equal sized cafeterias, lunchrooms and employee lounges for smokers and nonsmokers;
- (iii) Prohibition of smoking in
 - (a) auditoriums
 - (b) classrooms
 - (c) conference and meeting rooms
 - (d) elevators
 - (e) hallways
 - (f) medical facilities
 - (g) restrooms
- (iv) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption, and at least yearly thereafter;
- (v) All agencies shall supply a written copy of the smoking policy to any prospective employee who so requests;
- (vi) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers, may be declared a smoking area;

Senator STEVENS. Our next witness is Dr. Munzer of the Coalition on Smoking or Health, accompanied by David Neumeyer, the associate staff director.

TESTIMONY OF ALFRED MUNZER, M.D., COALITION ON SMOKING OR HEALTH, ACCOMPANIED BY DAVID B. NEUMEYER, ASSOCIATE STAFF DIRECTOR.

Dr. MUNZER. Mr. Chairman, members of the committee, I am Alfred Munzer, a physician specializing in diseases of the lung, a member of the board of directors of the American Lung Association and chair of its Government Relations Committee.

Today, I am delighted to appear on behalf of the Coalition on Smoking or Health, and as you indicated, I am accompanied by the associate director of the coalition, Mr. David Neumeyer.

The coalition was founded by the American Lung Association, the American Heart Association, and the American Cancer Society, and is now backed by many of the Nation's leading private health, education, and youth leadership organizations. Its goal is to reduce the toll exacted by smoking by bringing to the attention of legislators and other Government officials issues of smoking prevention and education.

On behalf of the coalition, I would like to thank you for the opportunity to express our views on the merits of the Non-Smokers' Rights Act of 1985 and commend you, Mr. Stevens, for introducing this legislation which recognizes that too little is done now to protect the health, safety, and comfort of nonsmokers who work or who visit the U.S. Government buildings.

Exposure of nonsmokers, both children and adults, to tobacco combustion products is referred to as passive or, more appropriately, to involuntary smoking. In those places, smoke accumulates. The concentrations vary with the number of smokers, the type of smoking, and with the characteristics of the microenvironment, especially ventilation.

Among the constituents of tobacco smoke are irritants, cancer-causing substances, and cellular poisons. Studies of the levels of respirable particles generated by smoking show a range that, if repeated, would be a violation of the outdoor national ambient air standards for total suspended particles.

More than sufficient scientific evidence exists for the harmful effects of smoking on the nonsmoker to justify strong governmental action to protect the nonsmoker.

Since the publication of the White-Froeb study, "Small Airways Dysfunction in Non-Smokers Chronically Exposed to Tobacco Smoke," the evidence has accumulated that from one-half to three-fourths of nonsmoking adults experience symptoms from ambient tobacco smoke exposure, including eye, nose, and throat irritation, headache, and nausea, and more severe effects in persons with chronic heart or lung disease; that passive smoking more than doubles the nonsmoker's risk of lung cancer; and that exposure to tobacco smoke, at work for adults or for children in the home, results in an impairment of lung function.

Most recently, the 1984 Surgeon General's report on the "Health Consequences of Smoking" concluded on the issue of passive smok-

ing: Cigarette smoke can make a significant, measurable contribution to the level of indoor pollution at levels of smoking and ventilation that are common in the indoor environment.

The children of parents who smoke have an increased prevalence of reported respiratory symptoms and have an increased frequency of bronchitis and pneumonia, particularly in early life.

Mr. Chairman, like your State of Alaska, many States have acted to protect the public from health risks due to passive smoking; 37 States have such legislation in place; 24 limit or restrict smoking in forms of public transportation; 21 restrict or ban smoking during public meetings or restrict smoking to certain areas within public buildings owned, operated, or run by the State; 26 restrict smoking within certain health care establishments, usually hospitals or clinics; 11 have laws requiring separate seating for nonsmokers in restaurants; 9 address smoking in places of retail sales; and, finally, 10 have enacted laws specifically addressing smoking in the workplace.

In addition, hundreds of counties and municipalities have ordinances to protect the public from health risks associated with passive smoking.

The coalition is delighted to support the Non-Smokers's Rights Act of 1985 as a positive step toward addressing the Federal role in the prevention of health effects relating to passive smoking.

We have three suggestions to improve this legislation: The non-smoking worker and nonsmoking visitor deserve the same health protection in buildings under the Federal Government's jurisdiction. We recommend that language specify that both worker and visitor areas be covered by regulations developed under this proposal.

We recommend that the Office of Smoking and Health, or a similar office within the Department of Health and Human Services, be involved in the development of these regulations to ensure a consistent approach among the several jurisdictions involved in the development of regulations to limit smoking in Federal buildings.

The bill should also contain provisions allowing agencies who have or who desire to develop more stringent regulations to do so.

A survey carried out for the American Lung Association by the Gallup organization showed that 82 percent of the nonsmokers and 55 percent of current smokers agree that smokers should not smoke around nonsmokers. This is indicative of the concern of the American public about the health risks of passive smoking. The Non-Smokers Rights Act of 1985 is a commonsense approach to reduced exposure to tobacco smoke, a substance whose danger requires no further study to justify governmental action to protect the nonsmoker.

The time is now to enact reasonable regulations restricting public smoking in public places, including the workplace, as a means of protecting the public health.

The coalition looks forward to working with you to enact this very important public health legislation.

Thank you.

Senator STEVENS. What is the background of your coalition, doctor?

Dr. MUNZER. The coalition is made up of three organizations, principally: the American Lung Association, the American Heart Association, and the American Cancer Society, and perhaps, Mr. Neumeyer could list some of the other organizations which have now added their names.

Senator STEVENS. Is this to coordinate the activities of those three organizations so that you can have a common attack on the problem?

Dr. MUNZER. Instead of having three witnesses in front of you, you have one voice speaking for all three major health organizations.

Senator STEVENS. Very good. How long has it been in existence?

Mr. NEUMEYER. The coalition was founded in the spring of 1982 by the three organizations that Dr. Munzer just listed, and consists still of those three organizations.

In addition, we work with a wide variety of other national organizations, including the National Interagency Council on Smoking and Health, a group of more than 32 national organizations. One example is that we are working with an ad hoc alliance to raise the Federal cigarette excise tax.

Senator STEVENS. There is the suggestion from the Tobacco Institute that just common courtesy is sufficient to take care of the situation of someone who has a health problem—just ask people not to smoke around them. Would that work?

Dr. MUNZER. I think that legislation is required. I think it really helps people to know that there is a sign that they can point to which gives legitimacy to their claim that they are annoyed or otherwise harmed by tobacco smoke.

So I think that regulations and posting signs are requirements and are really much, much more simple than for people to have to act on an individual basis.

Senator STEVENS. Have you had any experience, doctor, with people who are working in Federal buildings in areas where the local laws prohibit smoking or have designated smoking area concepts?

Dr. MUNZER. My experience really happens with the opposite. Hardly a week goes by that I do not at least have one referral of a Federal employee who has been harmed by passive smoking. They range from employees of the Defense Mapping Agency or the Department of Defense, even the Public Health Service itself.

Senator STEVENS. We appreciate very much your courtesy in coming to testify in support of the legislation, and we look forward to working with you and the others who have been kind enough to come here today.

We will continue the hearing tomorrow as scheduled. Thank you all very much.

Mr. NEUMEYER. Thank you.

Dr. MUNZER. Thank you.

[Dr. Munzer's prepared statement, with an attachment, follows:]



Coalition on Smoking OR Health

A PUBLIC POLICY PROJECT WITH THE
NATIONAL INTERAGENCY COUNCIL ON SMOKING AND HEALTH
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TESTIMONY OF

ALFRED MUNZER, M.D.

ON BEHALF OF

THE COALITION ON SMOKING OR HEALTH

AND ITS MEMBER ORGANIZATIONS
THE AMERICAN LUNG ASSOCIATION
THE AMERICAN HEART ASSOCIATION
THE AMERICAN CANCER SOCIETY

ON

THE NONSMOKERS' RIGHTS ACT OF 1985

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL
SERVICES

COMMITTEE ON GOVERNMENT AFFAIRS

U.S. SENATE

SEPTEMBER 30, 1985

BEST COPY AVAILABLE

Mr. Chairman and Members of the Subcommittee, I am Dr. Alfred Munzer a practicing physician who specializes in lung disease. As a volunteer with the American Lung Association, I serve on their Board of Directors and chair their Government Relations Committee. I appear before you today on behalf of the Coalition on Smoking or Health. The Coalition on Smoking or Health was formed by the American Lung Association, the American Heart Association and the American Cancer Society and is backed by many of this nation's leading private health, education and youth leadership organizations. The Coalition was created to bring to the attention of legislators and other governmental officials smoking prevention and education issues.

On behalf of the Coalition and its member organizations, I want to thank you for the opportunity to express our views about the merits of the "Non-Smokers' Rights Act of 1985", and commend you, Mr. Stevens, for introducing this legislation. Currently, too little is done to protect the health, safety and comfort of non-smokers who work in or who visit United States government buildings. The "Non-Smokers' Rights Act of 1985" recognizes this problem and will require responsible government officials to address it.

Exposure of nonsmokers, both children and adults, to tobacco combustion products is referred to as passive or involuntary

smoking. In enclosed spaces, smoke accumulates. The concentrations vary with the number of smokers, with the type of smoking, and with the characteristics of the microenvironment, especially ventilation. Among the constituents of tobacco smoke that have been measured, nitrogen oxide, carbon monoxide, nicotine and respirable particles, nitrosamines and aldehydes have been shown to be significantly elevated indoors as the result of tobacco smoking. A variety of measures have been utilized to quantify the nonsmoker's exposure to tobacco smoke. For example, studies of the levels of respirable particles generated by smoking under natural conditions in indoor micro- environments showed a range of 90-1140 ug/m³, depending on the smoker density and the effective ventilation. These levels in most instances, if the exposures were repeated, would be a violation of the National Ambient Air Quality Standard for Total Suspended Particulate, the outdoor equivalent.

More than sufficient scientific evidence exists of the harmful effects of smoking on the the non-smoker to justify strong governmental action to protect the non-smoker. Since the publication of the White-Froeb study, "Small Airways Dysfunction in Nonsmokers Chronically Exposed to Tobacco Smoke", the evidence has accumulated:

- o Several studies have indicated that from one-half to three-fourths of nonsmoking adults experience symptomatic effects from ambient tobacco smoke exposure including eye, nose and throat irritation, headache, and nausea, with more severe effects reported in persons with chronic heart or lung disease.
- o Two recent studies of lung cancer in nonsmokers showed evidence that passive smoking more than doubles the nonsmoker's risk of lung cancer.
- o Two epidemiological studies of the indoor environment and morbidity--one of 400 adult nonsmokers who were chronically exposed to tobacco smoke at work and the other of young children raised in households with smokers--found evidence of pulmonary impairment from passive smoking.

Most recently, the 1984 Surgeon General's Report on the Health Consequences of Smoking concluded on the issue of passive smoking:

- o Cigarette smoke can make a significant, measureable contribution to the level of indoor air pollution at levels of smoking and ventilation that are common in

the indoor environment.

- o The children of smoking parents have an increased prevalence of reported respiratory symptoms, and have an increased frequency of bronchitis and pneumonia early in life.

As you, Mr. Chairman, are aware from legislation in your own state of Alaska, many states have exhibited leadership to protect the public from health risks associated with passive smoking by enacting legislation which places limitations on smoking in public places. A total of 37 states have such legislation in place. Of these, 24 states limit or restrict smoking in forms of public transportation. Twenty-one states restrict or ban smoking during public meetings or restrict smoking to certain areas within public buildings owned, operated, or run by the state. Over half of the states--26--restrict smoking within certain health care establishments, usually hospitals or clinics. Eleven states have laws requiring separate seating for nonsmokers in restaurants and 9 states address smoking in places of retail sales. Finally, 10 states have enacted laws specifically addressing smoking in the workplace. However, a review of statewide regulation only touches the tip of the iceberg. Literally hundreds of county and municipality governments have

enacted legislation to protect the public from the health risks associated passive smoking.

The Coalition supports the "Non-Smokers' Rights Act of 1985" as a positive step towards addressing the federal role in the prevention of health effects related to passive smoking. It is appropriate that the issue of smoking in federal buildings be addressed in the manner provided. We would make 2 suggestions regarding improvements to this legislation:

- o The non-smoking worker and non-smoking visitor deserve the same health protection in buildings under the federal government's jurisdiction. We would recommend that language specify that both worker and visitor areas would be covered by such regulations developed under this proposal.
- o The bill recognizes several jurisdictions for the development of regulations for the limitation of smoking in federal buildings. We would recommend that the Office of Smoking or Health or a similar office within the HHS also be involved in the development of these regulations to ensure a consistent approach among the specified jurisdictions.

In closing I would like to review the results of a survey the American Lung Association conducted on the issue of non-smoker's rights. The survey, carried out for ALA by the Gallup Organization, showed that 82% of the nonsmokers and 55% of current smokers agree that smokers should not smoke around nonsmokers. On the issue of smoking in the workplace, 64% of the nonsmokers and 63% of the smokers preferred designated smoking areas in the workplace. These results are indicative of the concern of the American public about the health risks of passive smoking.

"The Non-Smokers' Rights Act of 1985", providing for the limitation of smoking in federal buildings, is a common sense approach designed to reduce exposure to tobacco smoke, a substance which in our opinion requires no further study to justify governmental action to protect the non-smoker. More than sufficient evidence of its harmfulness exists. We should not wait for further before enacting reasonable regulations restricting smoking in public places, including the workplace, as a means of protecting public health.

The Coalition looks forward to working with you to enact this very important public health legislation. Thank you.

STATES PLACING LIMITATIONS ON SMOKING IN PUBLIC PLACES

ALASKA	MINNESOTA
ARIZONA	MONTANA
ARKANSAS	NEBRASKA
CALIFORNIA	NEVADA
COLORADO	NEW HAMPSHIRE
CONNECTICUT	NEW JERSEY
DELAWARE	NEW YORK
DISTRICT OF COLUMBIA	NORTH DAKOTA
FLORIDA	OHIO
GEORGIA	OKLAHOMA
HAWAII	OREGON
IDAH0	PENNSYLVANIA
IOWA	RHODE ISLAND
KANSAS	SOUTH DAKOTA
KENTUCKY	TEXAS
MAINE	UTAH
MARYLAND	WISCONSIN
MASSACHUSETTS	WASHINGTON
MICHIGAN	

STATES WITH LAWS ADDRESSING SMOKING IN THE WORKPLACE

ALASKA (1984)
 CALIFORNIA (state employees only)
 CONNECTICUT (1983)
 FLORIDA (1985)
 HAWAII (state employees only)
 MAINE (1985)
 MINNESOTA (1975)
 NEBRASKA (1980)
 NEW JERSEY (1985)
 UTAH (1976)

Senator Stevens. The subcommittee is now recessed.

[Whereupon, at 11:55 a.m., the subcommittee was recessed to reconvene at the call of the Chair.]

NON-SMOKERS RIGHTS ACT OF 1985

TUESDAY, OCTOBER 1, 1985

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens, chairman of the subcommittee, presiding.

Present: Senator Stevens.

Senator STEVENS. Good morning. Our first witness this morning is our colleague from Hawaii, Hon. Spark Matsunaga. Spark, I am going to submit for the record after your testimony the statements of Senator Ford and Senator McConnell.

It is nice to have you here. I appreciate your taking the time to come and express your viewpoint on our bill, S. 1440.

TESTIMONY OF HON. SPARK M. MATSUNAGA, U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you, Mr. Chairman. It is, indeed, my pleasure to appear before your subcommittee today to speak in strong support of S. 1440, the so-called Non-Smokers Rights Act of 1985. I wish to commend the chairman for his leadership in introducing this bill, which would restrict smoking to designated areas in all U.S. Government buildings.

As an original cosponsor of S. 1440, along with Senators Goldwater, Murkowski, Hatch, and Proxmire, and on behalf of the two-thirds of the U.S. population who do not smoke, I hope this measure is enacted in order to promote health and improve the quality of life for both smokers and nonsmokers.

On a personal note, for many years I have made a firm policy of not permitting smoking by my staff in the office during regular office hours. I believe that this has resulted in a more pleasant work environment for all—the nonsmokers are satisfied and the smokers are accommodating. I imagine that the smokers smoke less than they ordinarily would if smoking were freely permitted anywhere in my office.

There is a movement growing and the Federal Government should be a part of it and encourage it. Estimates are that half of the companies and over 30 percent of the large corporations in this country have already set up some type of smoking policy. Bell Atlantic, for example, limits smoking areas, and one employee can

prohibit smoking in his or her entire office if it is enclosed. Smoking is allowed in large, well-ventilated areas.

Predictions are that a majority of companies will have banned smoking within 5 years, for the purpose of cutting costs. A smoker costs an employer approximately \$4,000 a year in health and life insurance, absenteeism, cleaning and maintenance, and work time wasted by smoking. Even if this figure might be overly generous, it cannot be denied that smoking in the workplace costs money and forces discomfort and health hazards upon many nonsmokers who have no recourse but to share the passive smoke.

Although passive smoking—that is, exposure to tobacco smoke—is difficult to measure, research does suggest that effects of cigarette, pipe, and cigar smoke cause 500 to 5,000 extra cases of cancer annually among nonsmokers. Studies have shown that there are larger amounts of noxious chemicals in clouds of smoke from cigarettes than in the smoke that is inhaled while smoking. The effects of tobacco smoke on the nonsmoker cannot be dismissed lightly.

Furthermore, as columnist Judy Mann of the *Washington Post* recently observed "Passive smokers aren't so passive anymore. They have been going to court to sue for smoke-free working environments."

State and local governments have been responding to their citizens' calls for restricted smoking. According to ASH [Action on Smoking and Health] at least eight States and more than 100 municipalities have laws prohibiting smoking in the workplace if any nonsmoker requests a smoke-free environment.

The city and county of Honolulu, in my home State of Hawaii, passed Ordinance No. 85-60 on June 18, 1985. Smoking is now prohibited in certain areas in city buildings, food and drug stores, banks, large retail stores, certain restrooms, some areas of health facilities, public elevators, theaters and rooms used for performing arts and in museums, libraries and galleries—although designated smoking areas may be provided in library reading rooms. Small businesses with not more than five employees per shift are exempted from smoking restrictions. Specified signs must be conspicuously posted in areas where smoking is prohibited. The penalty for violating the sign posting requirement is \$25, and the fine for smoking in nonsmoking areas is \$5. Officials have indicated that enforcement has been going along very smoothly to date.

I heard on the radio this morning that Florida has put into effect a nonsmoking law similar to that of the city and county of Honolulu.

Mr. Chairman, S. 1440 is a rational approach to meeting the needs of both smokers and nonsmokers. It does not ban smoking in all Federal facilities, as some critics are challenging. Rather, it mandates that the rules and regulations governing smoking in U.S. Government buildings shall "make reasonable accommodations for the needs of the smokers and nonsmokers who use the Government buildings."

Mr. Chairman, this bill would provide a healthier, more productive environment for all, and I heartily urge members of the subcommittee to support it.

Senator STEVENS. Thank you very much, Senator, for taking the time to express your support and for being one of the original co-

sponsors of our bill. I think your support will be very meaningful in the days ahead, and I look forward to working with you on it.

I appreciate your courtesy. Thank you very much.

Senator MATSUNAGA. Thank you.

Senator Stevens. Senators Hatch, McConnell, and Ford have statements for the record which will be inserted at this point.

[The prepared statements of Senators Hatch, McConnell, and Ford follow:]

Statement of Senator Orrin G. Hatch
for Hearings on S. 1440,
"The Non-Smoker's Rights Act of 1985."
Tues. October 1, 1985

I thank the Chairman for this opportunity to comment on this very worthwhile legislation. As an original cosponsor, I believe strongly that we need to provide a healthy environment for everyone who uses government buildings.

As you know, in the 97th Congress I introduced S. 772, the Smoking Prevention, Health and Education Act of 1983. This was eventually incorporated into H.R. 3979 and signed into law in October of 1984. As chairman of the Labor and Human Resources Committee, I have learned a great deal about the most pressing health problems in our society, one of which is the extreme health hazards associated with smoking. For many years cigarette smoking was suspected to be a major cause of illness, but not until the late 1950's did studies confirm the link between smoking and lung cancer. Since that time, smoking has been associated with heart disease, emphysema, strokes, and several types of cancer. In addition, new evidence indicates that there are health risks for non-smokers exposed to the smoke of others, so-called "passive smoking." Smoke from others may contain high concentrations of some carcinogens. There may be 500 to 5000 extra cases of cancer a year among non-smokers from passive smoking. The Public Health service reached the following conclusions in its 1979 Report on the Consequences of Smoking:

1) The toxins in cigarette smoke can reach levels which may adversely affect people with chronic lung disease or cardiovascular disease when they are forced to be in a room with smokers.

2) Passive smoking can aggravate the symptoms of asthma and chronic bronchitis.

3) Recent studies show that passive smoking may contribute to disease in healthy non-smokers. Involuntary smoking may pose a risk of cancer to the non-smoker.

4) Passive smoking affects infants and children. A National Health Interview Survey of children showed that those who live with smoking parents had more respiratory disease than those in families without smokers. Other studies show an increased incidence of pneumonia and bronchitis in the first year of life.

According to U.S. Department of Health and Human Services and surveys conducted by the American Cancer Society, both smokers and non-smokers favor restrictions on smoking in public places. Senator Matsunaga and I have established an office policy of "no smoking," in large part because of this increasing awareness. This policy makes working conditions more pleasant for everyone.

The issue you are addressing today is whether or not people have the right to enter Government buildings without being

exposed to tobacco smoke. This bill does not prevent anyone from smoking. It only establishes a procedure for limiting the areas where one can smoke. It will provide a healthier environment in which to breathe and a more comfortable environment in which to work. I wholeheartedly encourage my colleagues to support S. 1440.

STATEMENT OF SENATOR MITCH McCONNELL
SENATE SUB-COMMITTEE ON
CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES
OCTOBER 1, 1985

Mr. Chairman:

Thank you for allowing me to make this statement with regard to legislation introduced by you entitled "Non-Smokers Rights Act of 1985". I commend the Senator for his well-intentioned action, but I must frankly say that I foresee some very serious flaws in S. 1440.

I am not a smoker, however, I believe the vast majority of smokers in this country earnestly try to recognize the rights of those who choose not to smoke. I have no doubt that designation of smoking areas in government buildings in your state of Alaska has been successful, but the scope and magnitude of the legislation before this committee goes far beyond that of the Alaska state law.

In this bill, the General Services Administration (GSA) would be required by statute to designate smoking areas in every facility under control of the government. The United States has military facilities in every corner of the world. Would this bill require that a smoking area be designated in every, single Department of Defense facility? Robert F. Kennedy is a federally-owned facility, as you know. Would a smoking section be designated for

RFK during activities at the stadium? Would activities of the Congress, even this Committee, grind to a halt if a United States Senator lit up a cigar in an area that has not been designated as a smoking area?

The answer to all 3 of these hypothetical questions is probably not. So now what do we do? We legislatively or administratively provide for certain exemptions. This is totally impractical, because every federal institution can provide a good reason why it should be exempted from the provisions of this Act. So we're back to where we started. It begins to look a little ridiculous doesn't it?

Perhaps worse than the problems of implementation are the problems of enforcement. Under this proposal, every citizen could become a policeman in a federal building and a group of anti-smoking zealots could absolutely create havoc in a federal building if they, en masse, descended upon a federal facility to be sure the smoking law is being enforced. There is a considerable amount of uncertainty in this proposal regarding the court of general jurisdiction in the event someone is accused of violating this statute. Would there be trial by jury? Would trial be in Federal court or civil court? Where would the trial be if one of our diplomats in the U.S. embassy in Moscow was accused of smoking in a non-smoking area? Moscow, West Germany, Washington? Who determines the civil fine? A judge, a jury or a magistrate?

Finally, the costs of this proposal could be staggering. The number of 18" X 6" signs that would have to be posted in federal facilities is almost beyond comprehension. We would have to hire an army of painters and laborers just to paint and hang the signs designating the smoking and non-smoking areas, and I'm sure we would have to consult the State Department to determine if bilingual signs were needed in foreign countries.

I believe, Mr. Chairman, the best law in the "where to smoke-where not to smoke controversy" is the law of common sense and courtesy. Because of the significant uncertainties that would be caused by enactment of this legislation, I strongly urge this Committee to consider the positions I have put forth regarding this bill and vote against its being referred to the full Committee.

Thank you again, Mr. Chairman, for giving me this opportunity to address this issue.

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TESTIMONY
OF
SENATOR WENDELL H. FORD
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES
THE NON-SMOKER'S RIGHTS ACT OF 1985
OCTOBER 1, 1985

Mr. Chairman:

It was less than three weeks ago that I spoke before the Senate Subcommittee on Taxation and Debt Management regarding cigarette excise taxes. I appreciate the opportunity to offer testimony today about a similar concern of mine that expounds the same theme -- the Non-Smoker's Rights Act of 1985.

An ultimate analysis in examining any piece of legislation is what will it cost? In this instance, it could cost many Kentucky tobacco farmers their homes, farms, and economic security.

Tobacco is a product that has been attacked many times in recent years. These assaults have taken their toll. Seventy-two percent of Kentucky's tobacco farmers depend on tobacco for at least fifty percent of their gross income. So in essence, these continued assaults are not on the industry or manufacturers, but on the small, rural Kentucky tobacco farmer.

Let me tell you a few facts about Kentucky tobacco. It is Kentucky's fourth largest industry. It ranks only after government, industry, and the service and retail industry. My state has 101,000 farms, many of which support more than one family. The average farm size is 147 acres. Nationally, the average size of a farm is over 450 acres.

Tobacco accounts for 4.1 percent of the total Kentucky employment.

We're also talking about a substantial amount of money. The total value of Kentucky's crop was \$938,996,000 in 1984. It brought a total of \$2,385,000 to our economy. The direct income of farmers and farm workers was \$453,700,000. When the indirect effects are included, the figure is 5.5 percent of total personal income or \$1,937,000,000.

Look at the individual Kentucky tobacco farmer. Forty-seven percent of Kentucky tobacco farmers have a total family income of less than \$20,000. Seventy-six percent have a net annual farm income of less than \$10,000. Sixty-one percent of these farmers are 46 years or older. Eighty-three percent grew up on a farm. Forty-four percent of Kentucky's tobacco farmers have less than a high school education.

On a smaller level, look at LaRue County, Kentucky. LaRue County has 1011 farms. Tobacco is grown on 760 or seventy-five percent of those farms. In 1982, these farmers raised 1,592 acres of tobacco and marketed 3,437,237 pounds. These crops were valued at \$6.3 million. This means an average of \$8,289.42 per farm where tobacco was grown. In 1982, the average farm income was \$23,841 - tobacco represents twenty-five percent of the total farm income in LaRue County. With such a large portion of the community's economy at stake, any drop in production could be disastrous.

Or look at Carroll County, Kentucky. Total employment in that area attributed to tobacco was nine and one-half percent in 1982. Agricultural production accounted for five and four-tenths percent of the total gross county product. Tobacco production alone was responsible for seventy-seven percent of all agricultural production.

Tobacco farmers have been hurt time and time again. Take, for example, the No-Net-Cost program. Growers currently pay an assessment fee of 30 cents per pound of tobacco. In 1982, this fee was just one cent. In 1982, a 9 cents fee meant a \$44 million dollar out of pocket expense for Kentucky growers alone. In 1985, this expense will be upwards of \$150 million. As part of this No-Net-Cost program, growers also had to pay for grading services - an additional \$2.5 million in 1984. Kentucky growers also gave up \$147 million in price supports in 1984.

Changes in the No-Net-Cost program are but one of the many problems the Kentucky tobacco farmer has been confronted with. Falling farm prices, record high real interest rates, and reversals in the farm credit industry must be added in as a few items of the laundry list of pressing problems of the tobacco farmer.

Despite all of these problems, there is another change being proposed today. The Non-Smoker's Rights Act proposes to put yet another burden on the tobacco farmers by adding an additional law that will ultimately bring about a decrease in tobacco production.

Any drop in tobacco output means a tremendous loss for Kentucky. A mere drop of one percent would mean 545 lost jobs, \$23.9 million in lost state products, and \$19.4 million in lost income.

This legislation will ultimately bring about some drop in tobacco output.

And it is all unnecessary.

This is just another blow in the never ending assault on tobacco. And for what? To enact far reaching legislation that is unneeded. The "Non-Smoker's Rights Act of 1985" should be defeated.

Senator STEVENS. Our next witness is Hon. Charlie Rose from the House of Representatives.

TESTIMONY OF HON. CHARLIE ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Representative ROSE. Thank you, Mr. Chairman. Mr. Chairman, I apologize, as my staff has not yet arrived with the extra copies of my statement. But I would like to ask that it be made a part of the record, and I would ask permission to make a few comments to the committee today.

Senator STEVENS. Thank you very much. They did give us a copy. We are pleased to have you here this morning.

Representative ROSE. Thank you, Mr. Chairman. I want to sound a little different note than my good friend Sparky Matsunaga sounded, and urge a little caution or urge that another point of view be considered in the deliberation of S. 1440.

Mr. Chairman, I have served in the Congress for many years, and I serve on in the House Administration Committee and am chairman of the Subcommittee on Tobacco. As such, I want to say right up front that I don't smoke, and I don't encourage other people to smoke. As a matter of fact, my subcommittee right now is really locked in some rather difficult negotiations with cigarette companies. I basically represent people who grow tobacco, not people who manufacture or urge others to smoke tobacco products.

But I believe that this bill would be very confusing to administer, especially in the House and the Senate, with the unique environment in which we live. I think it would be better left up to the voluntary efforts of Members of Congress or the Senate and chairmen of the committees, such as yourself. I note over here on the right there is a sign that says, "The audience is requested not to smoke."

Usually I think that is enough, Mr. Chairman. I don't detect anybody smoking in the audience today. But under S. 1440, we would make it a civil fine if that sign were violated, and some magistrate or some court would be able to impose a fine of up to \$500 for violating what is ordinarily a voluntarily followed instruction.

I would hate to divert the Capitol Police to arresting a constituent of yours or of mine for smoking in the wrong place. I know that, as a practical matter, most of the time there would be warnings or deterrents rather than an actual arrest, but it could divert a lot of the attention that our staffs and Members of Congress would have to worry with.

I don't have any restrictions on smoking in my office, but as a matter of fact, we don't have anybody in my office who smokes. Down the hall from me in the Rayburn Building, Congressman George Miller of California has a totally no smoking office. His press assistant smokes, but they make him go out in the hall, and he occasionally wanders down to our office to have a cigarette.

I believe that this could also be followed in the regular Federal work force. I believe that agencies of the Government could work out among the employees within their offices the kinds of rules and restrictions that they want.

I certainly believe that Federal judges are more than capable, I say more than capable of determining the kinds of rules and deco-

rum that they want in the Federal judicial buildings and chambers. If a judge tells you to spit on the floor, you spit on the floor of the Federal courthouse. If he tells you not to smoke or even think about a cigarette, you don't even think about a cigarette if a Federal judge tells you that.

For that reason, I would just urge the subcommittee to consider that quite possibly, this sort of stuff is getting pretty far into codifying human conduct. I hate to see us go into that in the tobacco industry with smokers or with, really, anything else.

I wish that we could have a massive study done in this country about the effects of so-called passive, secondhand smoke from all types of sources.

I have examined some research that was done at the University of Southern California. I actually sent out and talked to one of the researchers about that report which made some suggestions about health impairment to the lungs of passive smokers; that is, people who just sit by and smoke other people's smoke unintentionally.

I would urge that we look at the effect of carbon monoxide from aircraft; from all the gases that automobiles emit; from all the gases that industrial pollution puts in the air. I realize that the little white cigarette with the smoke coming out of it is an easily definable target, that it is easy to go after.

But carcinogenic gases exist in our atmosphere in many, many forms totally undetected, and rather than pick on the cigarette, we should make a comprehensive study of just where all of the potentially hazardous fumes that are going into people's bodies are coming from.

I salute you and the members of your committee for your general and uncompromising concern for the health of American citizens, and I'm concerned about their health, too. I don't think people ought to have to sit in a work environment in any kind of a building or where someone is annoying them with any kind of smoke, foul language or whatever.

However, I would urge that you consider somehow this be done on a voluntary basis rather than almost making it a crime.

I thank you very much for allowing me to be here, sir.

Senator STEVENS. Thank you, Congressman, and I appreciate your taking the time to come over. I hope you will have a chance to review some of the testimony we have received so far.

Representative ROSE. Thank you, sir.

Senator STEVENS. We have, I am sure you realize, every intent to see to it that smokers rights are protected in Federal buildings, too, in designating a place for them to smoke.

We do have a disagreement on this. My State has tried this type of approach, and it has worked very well. I can tell you, I have never had a complaint since the Alaska law was put into effect that requires the designation of a place to smoke and then says you can't smoke in other than that area.

It has solved a lot of problems for us. We have testimony that there has not been one enforcement action necessary. I have indicated we don't really need to hang to the idea that we have to have a criminal sanction, that a small fine be involved in this. It is self-enforcing. It is, I think, something that the people who come from the area of tobacco production ought to take a look at. This is the

way that things are going, and I think in the long run, we would be better served to have the protection for the nonsmokers as well as the smokers.

There was a San Francisco case just last week which awarded nearly \$50,000 to a woman who brought the court case against one of the Defense agencies on the basis that she had not been accorded a smoke-free place in which to work.

Those cases are coming at us. We are looking at this from the hard-nosed point of view of those of us who are supposed to protect the Federal Treasury, too.

It seems that a reasonable action at this time might prevent unreasonable positions on either side from developing. So I urge you to take a look at our record, and I appreciate your taking the time to come over. You are always welcome to come over. I know the walk and the distance. I make the trip over your way too, Charlie, from time to time.

So we thank you for coming.

Representative ROSE. Thank you, Mr. Chairman. I appreciate your remarks, and I certainly will take a look at the evidence.

Senator STEVENS. Thank you very much.

Representative ROSE. Thank you, sir.

[Congressman Rose's prepared statement follows:]

Statement of Congressman Charlie Rose
on S. 1440

Mr. Chairman, I appreciate this opportunity to speak to you and to the distinguished members of this subcommittee on S. 1440, the "Non-Smokers Rights Act of 1985."

I have served in Congress for many years as a member of the House Administration Committee, and as chairman of the Subcommittee on Tobacco. My experience on these two committees has given me a very good perspective on the impact of this legislation -- and my experience tells me that S. 1440 is ill-advised and deeply flawed. Any benefit that could possibly come from this bill is more than offset by the problems and weaknesses it would create. S. 1440 would be almost impossible to implement, and if you managed to implement it, it would be extremely confusing to administer.

Mr. Chairman, say the bill would require Capitol Police to fine or arrest a constituent -- from Alaska in your case and North Carolina in mine -- for smoking in the wrong place during a visit to see us. Not only is situation embarrassing and inexcusable, it diverts our Capitol Police from their primary job of protecting the lives of visitors to the Capitol, staff, and Members of Congress.

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The issue of smoking in the office is a matter for every Member's office to decide for itself. My office staff, for example, has no restrictions on smoking in the office, while I know of an office where those who smoke go into the hall.

Mr. Chairman, you and the other members of this subcommittee have the responsibility to make sure the federal government runs as efficiently and as inexpensively as possible, and that qualified people continue to be attracted to public service. S. 1440 would be very costly to the federal government. There is probably no end to the number of changes that would have to be made to comply with this legislation, and the taxpayer would have to foot the bill. So, you would have to ask yourself -- what benefit would the taxpayers be getting for their money?-- None that I can think of. Would it help to make a more efficient federal workforce? Clearly no. There is no evidence that smoke from one person's cigarette causes any ill effects in fellow workers. In fact, there is probably more in the air, indoors and outdoors, that might be harmful to your health than a stray puff of tobacco smoke. What will happen next? - will we set aside rooms for those who want to eat food with added salt? With cholesterol?

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It makes no sense for Congress to mandate an overall smoking policy for the federal government. An overall policy such as the one contemplated by S. 1440 tells a federal employee who smokes that he or she is bad, and is being punished for smoking by being sent to some tiny room in a remote part of the building. Not only does this hurt worker morale and productivity, but it creates a class system in the federal workforce between smokers and non-smokers with the non-smokers as the upper class. This is bad precedent and it's bad policy. This kind of restrictiveness will deter many highly qualified people from entering public service. This is not smart management. This does not get the taxpayer the most for the dollar.

Mr. Chairman, I ask that every member of this subcommittee consider what I have said, conclude that S. 1440 is counterproductive and ill-advised, and then vote against it.

Thank you.

Senator STEVENS. Our next witness is the Administrator of the General Services Administration, Hon. Terence Golden.

**TESTIMONY OF TERENCE C. GOLDEN, ADMINISTRATOR,
GENERAL SERVICES ADMINISTRATION**

Mr. GOLDEN. Good morning, Mr. Chairman.

Senator STEVENS. Good morning.

Mr. GOLDEN. Thank you for the opportunity to appear before you to testify on S. 1440. With your permission, I would like to submit my opening statement for the record.

Senator STEVENS. Yes, sir.

Mr. GOLDEN. You will note that the statement summarizes GSA's current regulations concerning smoking on Federal property. I wish to emphasize the portion of my statement which provides that if this bill is enacted, GSA will fully support the legislation, and we will work with Federal agencies in implementing the law.

Let me summarize for the subcommittee how I view GSA's role in regulating smoking. Since my confirmation as GSA Administrator, I have made health and safety issues one of my top priorities. I view the smoking issue as a health issue. As the manager of the Federal Government's buildings, GSA has a responsibility to provide both an effective workplace and a healthful environment for all Federal employees.

I recognize that successful regulations governing smoking in Federal buildings must make reasonable accommodations between the needs of smokers and the needs of nonsmokers.

These accommodations, however, must be more than a matter of simple compromise. Smoking policy ultimately must be based on the Government's obligation to provide a healthful work environment based on our increased knowledge about the effects of passive smoking. However, I do not claim to be an expert in matters pertaining to smoking and health, nor do the employees of GSA have a special expertise in the health impact of smoke in the workplace.

For this reason, it is my intention to work closely with the true experts on health matters, the Surgeon General, and the Public Health Service, in reviewing GSA's regulations governing smoking in the workplace. Health factors may be the primary factors in determining smoking policy. However, they cannot be the only factors.

For example, it is vital that smoking policy does not result in either undue disruption in the workplace or unnecessary displacement of employees.

In addition, a smoking policy should not require major expenditures for physical modifications to the workplace or for enforcement or regulation. On this issue, it is my intent to consult with the Office of Personnel Management, OPM, and the Federal employee unions. I also believe that GSA can learn from the experiences of local and State governments and private firms which have imposed restrictions on smoking.

I also wish to note that the Federal Property and Administrative Services Act provides the Administrator of the General Services Administration with the authority to prescribe rules and regula-

tions for the operations of Federal buildings under the control of GSA.

Whether or not S. 1440 is enacted, I shall use this authority to pursue the review of the current policy in the manner I have outlined.

I fully realize that governing smoking in the workplace is filled with complex and controversial issues. I am, nevertheless, committed to the goal of providing a healthful environment for Federal employees working in buildings within the jurisdiction of GSA.

Senator STEVENS. Let me commend you for your attitude on this. I think that you do have a massive undertaking ahead of you, and I am pleased to see that you are going to confer with the private sector and State and local governments that have pioneered in this area.

There have been a series of States—as a matter of fact, there is an inexorable march toward State and local government regulation. Unfortunately, those regulations do not apply to Federal buildings on a mandatory basis, as I understand it.

I hope that you can move in the direction of this bill, even administratively, before it passes. Do you have any idea of whether the 180-day transition period envisioned by this bill would be sufficient?

Mr. GOLDEN. I think we could do it in 180 days. I would really prefer 9 months to get these regulations in place if the bill is approved. I think that would give us a little bit more time, not only to work, but also to coordinate. I think it is going to require some coordination with the Surgeon General and with OPM and a number of unions, as well. Once we have made a decision as to what we will do, we need time to get things organized and implemented. So, I would prefer 9 months as opposed to 180 days.

Senator STEVENS. All right. We will take a good look at that.

It is illegal, as I understand it, to bring alcohol for personal consumption into Federal buildings. That is my understanding.

Mr. GOLDEN. That is correct.

Senator STEVENS. How do you enforce that? Is that just self-enforcing?

Mr. GOLDEN. I would presume that the smoking policies that we are talking about would be enforced in a similar manner. I believe that during the entire time we have had the alcohol policies in effect, which has been for an extended period, we have had one fine result.

It has worked well. The agencies and the employees have worked together to enforce it, and I think it has been very successful.

I wouldn't anticipate penalties being associated with smoking restrictions. Through the cooperation of people in the agencies and the Federal work force, I think that we could get these laws implemented and they would work effectively with a minimal amount of disruption.

Senator STEVENS. You mentioned in your statement something that most opponents of this legislation have put forward, and that is that there will be a necessity to modify some of the offices involved. I do hope that you will study places like Alaska and San Francisco and Minnesota, where similar laws have been put into effect.

The studies indicate that there has been no massive expenditure of funds, but there have been some modest adjustments that have been required.

Mr. GOLDEN. Let me clarify that. It would be our recommendations that the policies we develop not require massive expenditures. That was the point I was trying to make in my testimony; that is, whatever policies we adopt, one of the criteria, in addition to the health and safety of our employees, is to look at the costs associated with implementing them.

I would expect that the regulations that were finally put in effect within our Federal buildings would not require major expenditures to accommodate them.

Senator STEVENS. The testimony we have had indicates that these designated smoking areas are most effective where the smoking areas are on a different ventilation system. I would urge you, as you look at new buildings—and I intend to make the same request of the Postal Service which also has a considerable number of new buildings—that you take into account the trend involved here and see if we can't design Federal buildings for the future to deal with the concept of having designated smoking areas and different ventilation systems for the areas in which smoking will not be permitted.

The indications are that in some areas, the smoke from one room is just taken into the same ventilation system, recirculated, and forced back through forced air heating into the rooms in which there is not supposed to be smoking.

I asked one person yesterday how we can determine whether or not we have reached levels of smoke concentration that would be adverse to health, and he said simply get a smoke detector. It is very cheap. We have not tried that. I may put a few of those up in some places in the Capitol and see how often they go off. They might remind us of just how much smoking there is in some of the areas that people have really taken for granted as being public areas in which the air quality is supposed to be good.

Many of our meeting rooms in the Capitol do not have a no-smoking sign. I think maybe I might sneak in a few smoke warning alarms and see. I would urge you to do the same thing, to find some inexpensive tests to find out when the concentrations of smoke are too much for the nonsmokers.

Mr. GOLDEN. That is the issue we really need to look into with the Surgeon General to understand that problem better. We do have a problem with the existing buildings in the sense that the heating and air conditioning ventilation systems are not really designed to accommodate a lot of the smoking within our buildings. When we look at building systems, we will have to consider the issue you raise.

Senator STEVENS. We appreciate very much your coming and expressing your point of view and the manner in which you have expressed it, indicating that you are going to move ahead in any event to try to improve the circumstances for nonsmokers in Federal buildings. That is good news. We appreciate that very much.

Mr. GOLDEN. Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

[Mr. Golden's prepared statement follows:]

OPENING STATEMENT
OF
TERENCE C. GOLDEN
ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION
BEFORE THE SENATE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE
AND GENERAL SERVICES
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
OCTOBER 1, 1985

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE:

IT IS A PLEASURE FOR ME TO APPEAR BEFORE YOU TODAY TO TESTIFY ON
S. 1440, THE NON-SMOKERS RIGHTS ACT OF 1985.

GSA IS RESPONSIBLE FOR ESTABLISHING RULES AND REGULATIONS FOR ALL
PROPERTY UNDER ITS CHARGE AND CONTROL, INCLUDING THE CONDUCT OF
ALL PERSONS ENTERING IN OR ON SUCH PROPERTY.

IN 1979, GSA'S SMOKING REGULATIONS WERE REVISED TO TAKE INTO
CONSIDERATION THE RIGHTS OF SMOKERS AND NON-SMOKERS AND ENCOURAGE
AGENCIES TO DEVELOP MORE STRINGENT INTERNAL RULES AND
ADMINISTRATIVE PROCEDURES TO HANDLE VIOLATIONS OF THESE RULES.
THESE REGULATIONS PROVIDE FOR NO SMOKING IN THE FOLLOWING AREAS:
AUDITORIUMS, CLASSROOMS, CONFERENCE ROOMS, ELEVATORS, SHUTTLE
VEHICLES, HAZARDOUS AREAS, AND LIBRARIES. THE REGULATIONS ALSO
PROVIDE FOR "NO SMOKING" AREAS TO BE ESTABLISHED IN CAFETERIAS.
EMPLOYEES OCCUPYING AN OFFICE MAY UNANIMOUSLY DECLARE THEIR
OFFICE A "NO SMOKING" AREA. IN ADDITION, THE ESTABLISHMENT OF
"NO SMOKING" WORK AREAS IN OPEN SPACE IS ENCOURAGED IN ORDER TO

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PLAN WORK SPACE IN A MANNER THAT EMPLOYEES MAY BE ACCCOMMODATED, PROVIDED EFFICIENCY OF WORK UNITS WILL NOT BE IMPAIRED, ADDITIONAL SPACE WILL NOT BE REQUIRED, AND COSTLY ALTERATIONS TO THE SPACE WILL NOT BE NECESSARY.

THE GENERAL SERVICES ADMINISTRATION'S SMOKING REGULATIONS ESTABLISH GUIDELINES FOR IMPLEMENTATION BY OCCUPANT AGENCIES. THEY ARE INTENDED TO ESTABLISH A BALANCE BETWEEN THE INTERESTS OF ALL EMPLOYEES AND PROVIDE THE AGENCY THE ABILITY TO DECLARE NON-SMOKING AREAS AS APPROPRIATE. IF AN AGENCY DEEMS IT WARRANTED, A COMPLETE PROHIBITION AGAINST SMOKING MAY BE INSTITUTED.

GSA WOULD ANTICIPATE THE AGENCIES BEING RESPONSIBLE FOR ENFORCEMENT AND MONITORING THESE DESIGNATED "SMOKING AREAS." GSA, HOWEVER, WOULD CONTINUE TO ASSUME THE RESPONSIBILITY IN PUBLIC AREAS AND JOINT USE SPACE. IN THIS CONNECTION, S. 1440 WOULD APPEAR TO EXTEND GSA'S AUTHORITY OVER BUILDINGS NOT UNDER OUR CONTROL, SUCH AS VETERAN ADMINISTRATION HOSPITALS AND CERTAIN TREASURY FACILITIES, WHICH MAY CREATE UNNECESSARY CONFLICT WITH SMOKING POLICIES WHICH THESE AGENCIES MAY HAVE ALREADY ESTABLISHED. THE SUBCOMMITTEE SHOULD GIVE SERIOUS CONSIDERATION TO THE VIEWS OF THESE AND OTHER INTERESTED AGENCIES BEFORE PROCEEDING FURTHER.

IF S. 1440 IS ENACTED, GSA WILL FULLY SUPPORT IT AND WILL WORK WITH THE OCCUPANT AGENCIES IN HELPING THEM DESIGNATE SMOKING AREAS WITHIN AGENCY ASSIGNED SPACE AND PLACE THE APPROPRIATE SIGNS.

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[Short recess.]

Senator STEVENS. Our next witness is Hon. C. Everett Koop, the Surgeon General of the Public Health Service, U.S. Department of Health and Human Services.

TESTIMONY OF C. EVERETT KOOP, M.D., SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senator STEVENS. Doctor, it is a privilege to have you here. We look forward to your testimony.

Dr. KOOP. Thank you, sir. I apologize for being late, but I was chairing a committee on smoking and health mandated by the Congress. So, I beg your forgiveness.

I am pleased to appear before you, Mr. Chairman, to discuss S. 1440, the Non-Smokers Rights Act of 1985. At the outset, I will defer to the General Services Administration regarding Federal facilities management policy and whether this bill, as drafted, is the best approach from that standpoint. My expertise, sir, is in the field of public health, and I would like to express my views with respect to the health of persons in the workplace.

For the past 15 years, the Public Health Service has supported the reduction of nonsmokers' exposure to ambient tobacco smoke. For example, a component within the Public Health Service, the Indian Health Service, as part of its emphasis on disease prevention and health promotion, has recently adopted a policy that all Indian Health Service patient care facilities should be smoke-free environments. We have, to date, 80 such institutions which have become smoke free.

Nonsmokers, as you are probably aware, make up over two-thirds of our adult population. Increasingly, this majority has become more and more vocal concerning their right to breathe air that is free of pollutants emitted from burning tobacco. As this majority finds existing administrative procedures for settling workplace grievances unsatisfactory, they are turning to the courts for relief.

I believe such procedures for protection of nonsmokers rights to be adequately justified in the scientific literature. I would like to briefly summarize the Public Health Service's current understanding of the scientific evidence which we feel justifies restrictions on smoking.

The health effects of cigarette smoking have been known or suspected for about 50 years. It was not until the 1950's, however, that a number of well-designed epidemiological studies conclusively demonstrated an association between cigarette smoking and lung cancer, as well as with other cancers. The scientific base linking smoking to various chronic diseases is now overwhelming, totaling over 50,000 such studies.

This evidence led scientists to begin to suspect that tobacco smoke emitted into the air of enclosed, indoor environments may, too, have an effect on health.

In the 1970's, investigators began to turn their attention to the possible health effects of passive smoking. The early research designs looked primarily at artificial environments and centered on

measuring chemical constituents such as carbon monoxide, tars, benzopyrene, nicotine and other substances found in tobacco smoke. In many studies, the environments were strictly controlled laboratory exposures.

We know today that cigarette smoke contains over 4,000 known constituents, some dozen of which are known carcinogens, that is, tumor promoters or initiators. Many of these constituents are found in sidestream smoke in greater concentrations than are found in mainstream smoke.

We have an illustrative table to prove that to you.

Tar, the fraction of tobacco that is usually associated with the carcinogenic process, is 70 percent higher in sidestream smoke than in mainstream smoke; carbon monoxide is 2.5 times greater; ammonia 73 times; benzopyrene, 3.4 times; and nicotine, 2.7 times greater in sidestream smoke than in mainstream smoke.

Sidestream smoke is released into the ambient air, resulting in dilution. Nonsmokers and smoker exposure is dependent upon the amount of smoke generated, the volume of ambient air and the type and amount of ventilation of the occupied space.

While the absorption of smoke constituents by nonsmokers in smoke-filled places has not been completely characterized, a recent Japanese report using urinary cotinine—cotinine being the metabolic end product of nicotine as a marker for exposure—found that some heavily exposed nonsmokers actually absorb the equivalent of one or two cigarettes per day. Contaminants from tobacco smoke are found everywhere: in homes, office, work sites, and other places where people are permitted to smoke.

Sometimes levels of these constituents are higher than are allowed in national air quality standards. Repace and Lowery, in their 1980 study, found excessive levels of particulate matter from tobacco smoke in every 1 of the 19 different environments where smoking was taking place.

Short-term concentrations exceeded levels of national ambient air quality standards by factors ranging from 1.2 to 10 and more.

Differences in the carcinogenicity of sidestream and mainstream smoke may also exist. Two investigators found sidestream smoke condensate to be more tumorigenic per unit weight in mouse skin assays than mainstream condensate.

The rationale and concern for the possible health effects of passive smoking is well-founded in the epidemiological literature on active smoking which has consistently noted a strong dose-response effect.

Data from the major perspective studies has documented a greater than fourfold excess risk of lung cancer for those smokers consuming nine or fewer cigarettes daily. As the level of daily smoking increases, so does the lung cancer death rate. Figure 2 in my testimony, extracted from the American Cancer Society study of over 1 million men and women followed prospectively for 12 years, illustrates the dose-response effect for four levels of daily cigarette consumption.

A dose-response effect has also been observed by the length of time one has smoked, an early age of initiation, depth of inhalation and other variables.

In short, the greater the overall exposure, the greater the health risk.

One study by White and Frobe, conducted among nonsmoking adults exposed to ambient tobacco smoke, noted a decrease in the small airways function equivalent to that observed in light smokers. This study population consisted of nonsmoking adults who did not live with smokers but were exposed to cigarette smoke at the workplace. Nonsmokers who are exposed to tobacco smoke in the air absorb nicotine, carbon monoxide, and other constituents, as do smokers, although, as would be expected, in smaller amounts. The amounts they absorb are dependent on the extent and length of exposure and the quality of ventilation.

In the 1982 Surgeon General's report on the health consequences of smoking and cancer, three epidemiological studies were cited that dealt with passive smoking and cancer. The findings of these studies, one each in Japan, the United States, and Greece, indicated that nonsmoking wives of smoking husbands experienced higher lung cancer rates than wives of nonsmoking husbands.

In the study from Japan and Greece, the differences were statistically significant, while the differences in the United States study were not. In the past 3 years, however, many additional studies have been published. Of the 15 studies published to date which have examined the link between passive smoking and cancer, only 3 have not shown a statistically significant positive correlation between the two.

Two additional studies, soon to be published, are purported to show a strong, positive correlation between passive smoking exposure and an increased risk of lung cancer. More recently, studies have also indicated that nonsmokers may also be at risk for developing coronary heart disease resulting from exposure to ambient tobacco smoke.

Surveys conducted by the Department of Health and Human Services, the American Cancer Society, and even the Tobacco Institute show that the majority of people, smokers as well as nonsmokers, favor reasonable restrictions on smoking in public places. In fact, these surveys indicate strong public sentiment favoring the restriction of public smoking. In the survey conducted by the Tobacco Institute, the majority approved segregating smokers in every one of the public places tested, and that included trains, airplanes, buses, theaters, eating establishments, and in workplaces and offices.

Three dozen States have enacted legislation that controls, restricts, or prohibits smoking in public places. Many of these laws address select circumstances such as elevators, while many others have enacted comprehensive clean indoor air acts. This legislation has not been enacted for reasons of fire or safety, per se, but to protect the rights of the nonsmoker to breathe clean air.

Legislation affecting smoking in the workplace has been enacted in nine States: California, Hawaii, and Alaska address only nonsmoker work rights for State employees. However, Minnesota, Utah, Nebraska, and Connecticut and, just this year, Maine and New Jersey address the rights of all nonsmoking employees in the workplace. Locally, hundreds of communities have proposed or enacted similar legislation.

The legislation as proposed by you, sir, parallels actions taken by several large corporations, including the Boeing Co. of Seattle, Aetna Life and Casualty Co., and others that have instituted measures whereby smoking is not banned, but permitted only in designated areas in the workplace.

As was stated in the 1982 Surgeon General's report entitled "The Health Consequences of Smoking: Cancer" I said, "Any health risk resulting from involuntary smoke exposure is a serious public health concern because of the very large number of nonsmokers in the population who are potentially exposed. Therefore, for the purpose of preventive medicine, prudence dictates that nonsmokers avoid exposure to secondhand smoke to the extent possible."

That concludes my statement, Mr. Chairman. I would be happy to reply to any questions.

Senator STEVENS. We thank you very much, Doctor, and appreciate the tables that you have provided the committee. They will be very helpful to us as we go through this study.

I want to congratulate you for your leadership in this area. I know there is a firm feeling that you have been very strong and forceful in dealing with the health hazards of smoke, and I think your support in this area will be very meaningful to us, particularly because of your leadership in the public health area in general. That is going to be very important.

Coming from a State that has a substantial involvement with the Indian Health Service, I thank you for cooperating with them in their endeavor to make their facilities smoke-free.

There is one thing that has bothered us a little bit. There is one study that came out of the National Institutes of Health on second-hand sidestream smoke, particularly its effect on children. It did not come to the same conclusions as the other reports that we have mentioned. Have you analyzed that study?

Dr. KOOP. No; I have not. At the conclusion of that study, Dr. Lenfant, who is the director of the National Heart, Lung and Blood Institute, said that he felt the evidence was sufficiently good to continue further on the same studies. I would predict that when that is done, they will conform to previous studies that have found it very deleterious for youngsters to be in a smoking environment.

Senator STEVENS. I think it is most important that we pursue that. That was a strong report.

Dr. KOOP. Yes; it was.

Senator STEVENS. I take it that was an interim report.

We are seeking to implement of the concept of designated smoking areas as uniformly as possible throughout the three branches of the Federal Government and to ensure that that is done in a consistent manner. We would like to designate HHS, and particularly your office, to be the general advisor of that effort. Would that be consistent with your approach?

Dr. KOOP. We would welcome that opportunity to help, sir.

Senator STEVENS. That would be very good. We appreciate your help and look forward to any suggestions you may have as we go along.

I think that the important thing to do is to try to see if we can make people understand that this measure, at least, is designed to bring about a protection for nonsmokers but without abrogating to-

tally a prerogative—I am not sure I want to call it a right—but a prerogative of the smoker to continue smoking even at the workplace in designated areas where they would not have an adverse impact on their coworkers.

We look forward to your help, doctor. I appreciate the fact that you have joined us this morning. We will be working with you on this measure as it moves along.

Dr. Koop. Thank you, sir.

Senator STEVENS. Thank you very much.

[Dr. Koop's prepared statement, with attachments, follows:]

STATEMENT OF

C. EVERETT KOOP, M.D.

SURGEON GENERAL

PUBLIC HEALTH SERVICE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE

AND GENERAL SERVICES

COMMITTEE ON GOVERNMENTAL AFFAIRS

U.S. SENATE

OCTOBER 1, 1985

Mr. Chairman, Members of the Committee:

I am pleased to appear before you today to discuss S. 1440, the Nonsmokers Rights Act of 1985. At the outset, I will defer to the General Services Administration regarding Federal facilities management policy and whether this bill as drafted, is the best approach from that standpoint. My expertise is in the field of public health and I would like to express my views with respect to the health of persons in the workplace.

For the past 15 years the Public Health Service (PHS) has supported the reduction of nonsmokers exposure to ambient tobacco smoke. For example a component within the PHS, the Indian Health Service, as part of its emphasis on disease prevention and health promotion has recently adopted a policy that all IHS patient care facilities should be smoke-free environments. Nonsmokers, as you are probably aware, make up over two-thirds of our adult population. Increasingly, this majority has become more and more vocal concerning their right to breath air that is free of pollutants emitted from burning tobacco. As this majority finds existing administrative procedures for settling workplace grievances unsatisfactory they are turning to the courts for relief.

I believe such procedures for protection of nonsmokers rights to be adequately justified in the scientific literature. I would like to briefly summarize the Public Health Service's current understanding of the scientific evidence which we feel justifies restrictions on smoking.

The health effects of cigarette smoking have been known or suspected for over 50 years. It was not until the 1950s, however, that a number of well designed epidemiological studies conclusively demonstrated an association between cigarette smoking and lung cancer as well as with other cancers. The scientific base linking smoking to various chronic diseases is now overwhelming, totalling over 50,000 studies. This evidence led scientists to begin to suspect that tobacco smoke emitted into the air of enclosed indoor environments may too have an effect on health. In the 1970s, investigators began to turn their attention to the possible health effects of passive smoking. The early research designs looked primarily at artificial environments and centered on measuring chemical constituents such as carbon monoxide, tars, benzopyrene, nicotine and other substances found in tobacco smoke. In many studies the environments were strictly controlled laboratory exposures.

We know today that cigarette smoke contains over 4,000 known constituents, some four dozen of which are known carcinogens, tumor promoters or initiators. Many of these constituents are found in side-stream smoke in greater concentrations than are found in mainstream smoke. Some of these are illustrated in Table 1.

-3-

Tar, the fraction of tobacco smoke that is usually associated with the carcinogenic process, is 70 percent higher in side-stream than mainstream smoke. Carbon monoxide is 2.5 times greater, ammonia 73 times, benzopyrene 3.4 times, and nicotine 2.7 times greater in side-stream smoke than in mainstream smoke.

Side-stream smoke is released into the ambient air, resulting in dilution. Nonsmoker (and smoker) exposure is dependent upon the amount of smoke generated, the volume of ambient air, and the type and amount of ventilation of the occupied space.

While absorption of smoke constituents by nonsmokers in smoked filled spaces has not been completely characterized, a recent Japanese report by Matsukura, Taminato and associates using urinary cotinine levels as a marker for exposure, found that some heavily exposed nonsmokers actually absorbed the equivalent of one to two cigarettes per day. Contaminants from tobacco smoke are found everywhere in homes, office, worksites, and other places where people are permitted to smoke. Sometimes levels of these constituents are higher than are allowed for in national air quality standards. Repace and Lowrey, in their 1980 study, found excessive levels of particulate matter from tobacco smoke in every one of the 19 different environments

where smoking was taking place. Short-term concentrations exceeded levels of National Ambient Air Quality Standards by factors ranging from 1.2 to 10 and more (figure 1).

Differences in the carcinogenicity of side-stream and mainstream smoke may also exist; Wynder and Hoffmann found side-stream smoke condensate to be more tumorigenic per unit weight in mouse skin assays than mainstream smoke condensate.

The rationale and concern for the possible health effects of passive smoking is well founded in the epidemiological literature on active smoking which has consistently noted a strong dose-response effect. Data from the major prospective studies has documented a greater than four-fold excess risk of lung cancer for those smokers consuming nine or fewer cigarettes daily. As the level of daily smoking increases so does the lung cancer death rate. Figure 2 extracted from the American Cancer Society study of over 1 million men and women followed prospectively for 12 years illustrates the dose-response effect for four levels of daily cigarette consumption. A dose-response effect has also been observed by the length of time one has smoked, an earlier age of initiation, depth of inhalation, and other variables. In short, the greater the overall exposure, the greater the health risk.

One study (White and Frobe) conducted among nonsmoking adults exposed to ambient tobacco smoke noted a decrease in small airways function equivalent to the observed in light smokers. This study population consisted on nonsmoking adults who did not live with smokers but were exposed to cigarette smoke at the workplace. Nonsmokers who are exposed to tobacco smoke in the air, absorb nicotine, carbon monoxide, and other constituents, as do smokers, although, as would be expected, in smaller amounts. The amounts they absorb are dependent on the extent and length of exposure and the quality of ventilation.

In the 1982 Surgeon General's Report on the health consequences of smoking and cancer, three epidemiological studies were cited that dealt with passive smoking and cancer. The findings of these studies, one each in Japan, the United States, and Greece, indicated that nonsmoking wives of smoking husbands experienced higher lung cancer rates than wives of nonsmoking husbands. In the studies from Japan and Greece the differences were statistically significant, while the differences in the United States study were not. In the past three years, however, many additional studies have been published (Table 2). Of the 15 studies published to date which have examined the link between passive smoking and cancer, only three have not shown a

statistically significant positive correlation between the two. Two additional studies, soon to be published, are purported to also show a strong positive correlation between passive smoking exposure and an increased risk for lung cancer. More recently, studies have also indicated that nonsmokers may also be at risk for developing coronary heart disease resulting from exposure to ambient tobacco smoke.

Surveys conducted by the Department of Health and Human Services, the American Cancer Society, and even the Tobacco Institute show that the majority of people, smokers as well as nonsmokers, favor reasonable restrictions on smoking in public places. In fact, these surveys indicate strong public sentiment favoring the restriction of public smoking. In the survey conducted by the Tobacco Institute, the majority approved for segregating smokers in every one of the public places tested, including trains, airplanes, buses, theaters, eating establishments, and in work-places and offices.

Three dozen States have enacted legislation that controls, restricts, or prohibits smoking in public places. Many of the laws address select circumstances such as elevators while many others have enacted "Comprehensive Clean Indoor Air Acts." This legislation has not been enacted for reasons of fire or safety, per se, but to protect the rights of the nonsmoker to breathe clean air.

Legislation affecting smoking in the workplace has been enacted in nine states: California, Hawaii, and Alaska address only nonsmoker worker rights for state employees, however, Minnesota, Utah, Nebraska and Connecticut and this year Maine and New Jersey address the rights of all nonsmoking employees in the workplace. Locally, hundreds of communities have proposed or enacted similar legislation.

The legislation, as proposed by Senator Stevens, parallels actions taken by several large corporations, including the Boeing Company of Seattle, Aetna Life and Casualty Company and others that have instituted measures whereby smoking is not banned but permitted only in designated areas in the workplace. As was stated in the 1982 surgeon General's Report "The Health Consequence of Smoking: Cancer," "Any health risk resulting from involuntary smoke exposure is a serious public health concern because of the large number of nonsmokers in the population who are potentially exposed. Therefore, for the purpose of preventive medicine, prudence dictates that nonsmokers avoid exposure to second-hand smoke to the extent possible."

Mr. Chairman, this concludes my statement. I will be happy to respond to questions.

TABLE 1

Particulate Phase Constituents of Cigarette Smoke
Ratio of Sidestream Smoke (SS) to Mainstream Smoke (MS)

	MS	SS/MS		MS	SS/MS
"Tar"	1-40 mg	1.7	Quinoline	1.7 µg	11
Water	1-4 mg	2.4	Methylquinolines	0.7 µg	11
Toluene	108 µg	5.6	Aniline	360 ng	30
Stigmasterol	53 µg	0.8	2-Naphthylamine	2 ng	39
Total Phytosterols	130 µg	0.8	4-Aminobiphenyl	5 ng	31
Phenol	20-150 µg	2.6	Hydrazine	32 bg	3
Catechol	130-280 µg	0.7	N'-Nitrosomonicotine	100-500 ng	5
Napthalene	2.8 µg	16	NNK*	80-220 ng	10
Methylnaphthalene	2.2 µg	28	Nicotine	1-2.5 mg	2.7
Pyrene	50-200 µg	3.6			
Benzo(a)pyrene	20-40 µg	3.4			

Gas Phase Constituents of Cigarette Smoke
Ratio of Sidestream Smoke (SS) to Mainstream Smoke (MS)

	MS	SS/MS		MS	SS/MS
Carbon Dioxide	20-60 mg	8.1	Nitrogen Oxides (NO _x)		
Carbon Monoxide	10-20 mg	2.5	Ammonia	80 µg	73
Methane	1.3 mg	3.1	Hydrogen cyanide	430 µg	0.25
Acetylene	27 ug	0.8	Acetonitrile	120 µg	3.0
Propane Propene	0.5 mg	4.1	Pyridine	32 µg	10
Methylchloride	0.65 mg	2.1	3-Picoline	24 µg	13
Methylfuran	20 µg	3.4	3-Vinylpyridine	23 µg	28
Propionaldehyde	40 µg	2.4	Dimethylnitrosamine	10-65 µg	52
2-Butanone	80-250 µg	2.9	Nitrosopyrrolidine	10-35 µg	27
Acetone	100-600 µg				

SOURCE: Adapted from Brunnenmann, et al 1978

TABLE 2'

SUMMARY OF STUDIES ON PASSIVE SMOKING AND CANCER

<u>WORKER</u>	<u>COUNTRY</u>	<u>RISK RATIO</u>	<u>STAT. SIGNIF.</u>	<u>SIZE</u>	<u>TYPE OF STUDY</u>
CHAN (1979)	HONG KONG	0.85	--	223 F	CASE CONTROL
PHILLIPS (1980)	USA	2.4F, 1.5M	F	52,000 F, 17,000 M	PROSPECTIVE
GARFINKEL (1981)	USA	1.2	NO	180,000 F	PROSPECTIVE
HIRAYAMA (1981)	JAPAN	1.8F, 2.9M	F, M	90,000 F, 20,000 M	PROSPECTIVE
TRICHOPOULOS (1981)	GREECE	2.4	F	302 F	CASE CONTROL
CORREA(1983)	USA	2.0M, 2.1F	F	188 M, 155 F	CASE CONTROL
GILLIS (1983)	SCOTLAND	3.2M, 1.0F	NO	6 M, 8 F	CASE CONTROL
HIRAYAMA (1983)	JAPAN	2.3-3.4	--	28 F	PROSPECTIVE
HIRAYAMA (1983)	JAPAN	1.4-1.9	--	200 F	PROSPECTIVE
KNOTH (1983)	GERMANY	3.0	--	39 F	CASE CONTROL
KABAT (1984)	USA	1.4M, 0.9F	M	37 M, 97 F	CASE CONTROL
MILLER (1984)	USA	1.9	F	438 F	CASE CONTROL
REPACE (1984)	USA	1.7	--	180,000 F	REANALYSIS
SANDLER (1985)	USA	1.7-4.6	M, F	420 M, F	CASE CONTROL
SANDLER (1985)	USA	2.0	M, F	466 M, F	CASE CONTROL

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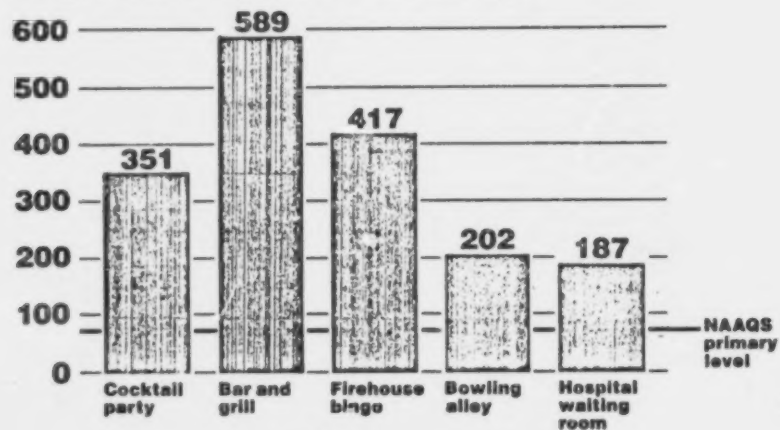
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FIGURE 1

A nonsmoker's exposure to cigarette smoke

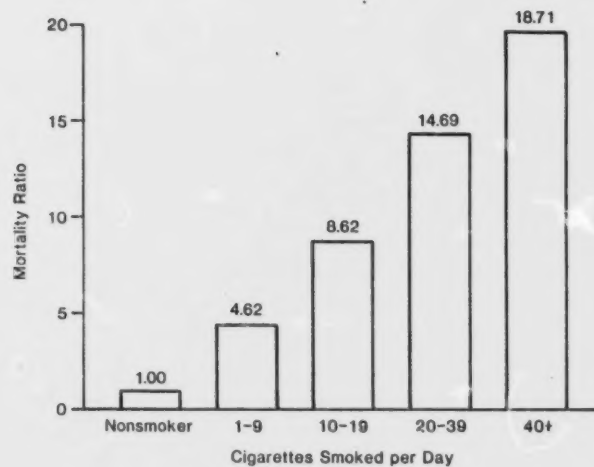
Respirable Suspended Particulates



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FIGURE 2

**Lung Cancer Mortality Ratios for Men,
by Current Number of Cigarettes
Smoked per Day - ACS 25 State Study**



Source: 1982 Report of the Surgeon General

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Senator STEVENS. Tomorrow morning we will continue with the American Medical Association and the Tobacco Institute in this room at 10 a.m.

Thank you very much.

[Whereupon, at 10:45 a.m., the subcommittee was recessed to reconvene Wednesday October 2, 1985, at 10 a.m.]

NON-SMOKERS RIGHTS ACT OF 1985

WEDNESDAY, OCTOBER 2, 1985

U.S. SENATE
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens, chairman of the subcommittee, presiding.

Present: Senator Stevens.

Senator STEVENS. This morning, we are continuing the hearings on S. 1440, and our first witness this morning is William R. Felts. Dr. Felts is chairman of the Council on Legislation of the American Medical Association. He is accompanied by Michael Zarski from the Department of Federal Legislation of the AMA.

I am happy to have you here, gentlemen.

TESTIMONY OF WILLIAM R. FELTS, M.D., CHAIRMAN, COUNCIL ON LEGISLATION, AMERICAN MEDICAL ASSOCIATION, ACCOMPANIED BY MICHAEL ZARSKI, DEPARTMENT OF FEDERAL LEGISLATION

Dr. FELTS. Thank you, Mr. Chairman. We appreciate this opportunity to testify in support of S. 1440, the Nonsmokers Rights Act.

This legislation includes important findings concerning the adverse effects of secondhand tobacco smoke and the need for providing smoke-free environments wherever possible.

S. 1440 would limit smoking to designated areas in buildings under Federal control, thereby promoting a smoke-free environment. We support this legislation. It is sound public policy, and is consistent with our efforts to provide AMA employees with a safe and healthy work environment.

In August of this year, the American Medical Association expanded its in-house policy aimed at further restricting smoking. This action is consistent with the association's position to strive for a smokeless society by the year 2000.

Our employees, both smokers and nonsmokers, have accepted and cooperated in this policy with mutual regard for their fellow employees.

AMA employees are encouraged to refrain from smoking in all public areas in AMA buildings. Smokers are asked to reduce their smoking voluntarily, if not eliminate it completely, in open work areas, including their own work stations.

Employees also are encouraged to reduce smoking in walled offices and are asked to refrain from smoking when they hold meetings in their offices. The association is providing designated smoking areas for use by smokers.

The American Medical Association also continues to sponsor "smoke stoppers" workshops to encourage and assist those employees who desire to stop smoking. Employees who enroll in these workshops pay an initial participation fee, which the association refunds to those who remain nonsmokers for the specified length of time.

Let me again emphasize that this policy, which relies on voluntary compliance, has met with the acceptance and cooperation of both smoking and nonsmoking employees.

We believe that the Non-Smokers Rights Act would meet with similar acceptance. The public at large has become aware of the adverse implications of smoking on those that are exposed to secondhand smoke.

In 1978, a Roper poll found that nearly 60 percent of the population believed that smoking is hazardous to the nonsmoker's health. In 1983, Gallup polls indicated a majority of nonsmokers and smokers agreed that smoking should be controlled in the workplace.

Scientific studies have documented various adverse effects from the exposure of nonsmokers to the smoke of tobacco products in the indoor environment. This topic was examined in the May 24, 1985 issue of the *Journal of the American Medical Association*. This was one of two issues of *JAMA* within the last year that focused on smoking and health.

Findings from these studies document effects ranging from eye irritation in sensitive individuals to tentative indications that chronic exposure to smoke may actually increase a nonsmoker's risk of cancer of the lung.

Being present in a smoky environment measurably increases a nonsmoker's level of carbon monoxide and nicotine, in some cases, to those levels found in smokers. In patients with angina, exposure to secondhand or passive smoke can hasten the onset of angina symptoms by 40 percent.

We have only scratched the surface of research in this area, but we do know that exposure to secondhand smoke can be harmful.

Mr. Chairman, your bill, S. 1440, presents the Federal Government with the opportunity to become a good model for others responsible for indoor environments and employee health. On the State level, the AMA has drafted model legislation to restrict smoking in public places. Seventeen States have adopted laws containing one or more provisions similar to the AMA model bill. Many municipalities have enacted similar provisions through local ordinance. Unfortunately, federally controlled buildings are not subject to these State or local requirements.

Restrictions on smoking indoors is just one of the methods that AMA advocates for meeting the overall goal of a smoke-free society by the year 2000.

It is, indeed, an important, practical, and effective measure that is immediately achievable. Other actions supported by the AMA are listed in the addendum attached to our statement.

Once again, we appreciate this opportunity to express our support for the Non-Smokers Rights Act. Those who do not choose to play smoker's roulette should be protected from those who do.

We commend you, Mr. Chairman, and the members of the subcommittee for your involvement and willingness to address directly this issue affecting the health and well-being of Federal workers and the citizens of the Nation who use Federal buildings.

At this time, I will be happy to answer any questions you may have.

Senator STEVENS. Thank you very much, Doctor, for your support of this legislation. In terms of the AMA policy in your own buildings, I take it that that is a voluntary concept. Do you have any sanctions at all involved in it?

Dr. FELTS. There are no sanctions. It is voluntary at this point.

Senator STEVENS. I am of the opinion that these steps are really self-enforcing; that the smokers understand that as long as their rights are protected, it is in the best interests of all concerned. Has that been your experience?

Dr. FELTS. Experience to date indicates that sanctions are unnecessary.

Senator STEVENS. That is my feeling also. We originally put a sanction in this bill, but as we studied the history of similar steps in State and local governments, those sanctions have been totally unnecessary. So we intend to eliminate the sanction and rely upon just the total cooperation of the people involved. It does take an authorization to put into effect a policy of designating areas in which smoking is permitted, and prohibiting it in all other areas.

We are very pleased to have your support. I congratulate the AMA for coming forward and supporting this goal and also for your own efforts within your jurisdiction.

As a matter of fact, I have been somewhat pushed by some of the doctors in my area who feel very strongly about this issue and were very much advocates of the change in the Alaska law.

Thank you very much. We appreciate your appearance and your testimony, and I am sure it will be heard by many of my colleagues.

Dr. FELTS. Thank you.

[Dr. Felts' prepared statement, with an attachment, follows:]

Statement of the American Medical Association

to the

Subcommittee on Civil, Post Office and General Services
Committee on Governmental Affairs
United States Senate

Presented by

William R. Felts, M.D.

RE: S. 1440 - Non-Smokers Rights Act of 1985

October 2, 1985



American Medical Association
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Chicago, Illinois 60610

Department of Federal Legislation
Division of Legislative Activities
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STATEMENT

of the

AMERICAN MEDICAL ASSOCIATION

to the

Subcommittee on Civil, Post Office and General Services
Committee on Governmental Affairs
United States Senate

Presented by

William R. Felts, M.D.

RE: S. 1440 - Non-Smokers Rights Act of 1985

October 2, 1985

Mr. Chairman and Members of the Subcommittee:

I am William R. Felts, M.D. I am a physician in the practice of rheumatology in Washington, D.C., and I am the Chairman of the Council on Legislation of the American Medical Association. Accompanying me is Michael Zarski of AMA's Department of Federal Legislation. The American Medical Association appreciates this opportunity to testify in support of S.1440, the Non-Smokers Rights Act.

The Non-Smokers Rights Act includes important findings concerning the effects of second-hand tobacco smoke and the need for providing smoke-free environments wherever possible. This bill would limit smoking to designated areas in buildings under federal control, thereby promoting a smoke-free environment. We support this legislation. It is consistent with AMA's efforts to provide our own employees with a safe and healthy work environment.

The AMA has undertaken an active program to maintain a healthful working environment. In the past, the AMA removed cigarette vending machines and, as an initial step, banned smoking in certain designated areas on its premises such as the auditorium, the Board conference room, the cafeteria, and the employee health facility. Our employees, both smokers and non-smokers, accepted and cooperated in this policy with mutual regard for the rights and feelings of their fellow employees.

In August of this year, the AMA announced a new and expanded policy aimed at further restricting smoking within its facilities. This action is consistent with industry trends, AMA policy and the Association's public position to strive for a smokeless society by the year 2000.

AMA employees are encouraged to refrain from smoking in all public areas in AMA buildings. To date, they have successfully complied with this policy as it pertains to the existing no-smoking areas. The following public areas are newly designated non-smoking to be marked with appropriate signs:

- lobbies and reception areas
- all conference rooms
- washrooms

As an important feature, smokers are asked to reduce their smoking voluntarily, if not eliminate it completely, in open work areas which may also include their own work stations. Employees also are encouraged to reduce smoking in walled offices as well and are asked to refrain from smoking when they hold meetings in their offices. The Association does provide designated smoking areas for use by smokers.

To encourage and assist those employees who desire to stop smoking, the AMA continues to sponsor "smoke-stoppers" workshops. Employees who enroll in these workshops pay an initial participation fee which the Association refunds to those who remain non-smokers for a specified length of time.

Let me again emphasize that the AMA policy on smoking on AMA premises has met with acceptance and cooperation of smoking and non-smoking employees.

The foregoing procedures have been established based on a concern for the interests of all employees, whether they are smokers or non-smokers. For this reason, it relies on voluntary employee compliance for the majority of restrictions which our smoking policy entails. The Association is fair but firm in the application of the principles which underlie the policy on smoking.

The situation in federally-controlled buildings differs somewhat. In such buildings, public utilization is a more significant factor. Yet we believe that the public-at-large has become more aware of the adverse implications of smoking on those who are exposed to second-hand smoke. Even in 1978, a Roper poll found that nearly 60% of the population believed that smoking is hazardous to the non-smoker's health. And clearly, some individuals are more sensitive to tobacco smoke than others.

In the scientific literature, a number of studies have documented various adverse effects from the exposure of non-smokers to tobacco-combustion products in the indoor environment. This issue was

examined in the May 24, 1985 issue of the Journal of the American Medical Association and a survey of studies was described in the August 22, 1985 New England Journal of Medicine. Findings from these studies document effects ranging from eye irritation in sensitive individuals to tentative indications that chronic exposure to smoke may actually increase a non-smoker's risk of lung cancer. It has also been determined that being present in a smoky environment measurably increases a non-smoker's level of carbon monoxide and nicotine. In some cases, carbon monoxide and nicotine levels in non-smokers exposed to smoky environments are equivalent to the levels found in light smokers. In patients with angina, exposure to second-hand smoke can hasten the onset of angina symptoms by up to 40%. While it may be that we have only scratched the surface in this area of research, what we do know precludes any denial that exposure to second-hand smoke can be harmful.

Mr. Chairman, your bill, S. 1440, presents the Congress with the opportunity for the federal government to become a good model for others responsible for indoor environments and employee health. Congress has recently strengthened the labeling requirements on cigarettes warning of health hazards of smoking. With respect to federal buildings Congress has opportunity, through S. 1440, of taking a further step in protection of federal employees and uses of public buildings. On the state level, the AMA drafted model legislation to restrict smoking in public places. Seventeen states have adopted laws containing one or more provisions patterned after or similar to the AMA model bill. Many municipalities have enacted similar provisions through local ordinance. Unfortunately, federally controlled buildings are not subject to these state or local requirements.

Restrictions on smoking indoors is just one of the methods that AMA advocates for meeting the overall goal of a smoke-free society by the year 2000. It is indeed an important, practical and effective measure that is immediately achievable. Other actions supported by the AMA are listed in the Addendum attached to our statement.

CONCLUSION

Once again, we appreciate this opportunity to express our support for the Non-Smokers Rights Act, and we commend you, Mr. Chairman and members of the Subcommittee, for your involvement and willingness to address directly this issue affecting the health and well-being of federal workers and the citizens of this nation who use federal buildings.

At this time I would be happy to answer any questions you may have.

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ADDENDUM

October 1985

AMERICAN MEDICAL ASSOCIATION

Policy on

Tobacco and Health

For many years the American Medical Association has warned of the relationship between tobacco usage and the incidence of certain diseases. Because of the health hazard involved, the AMA has advocated action that discourages tobacco use. Significant AMA policies and actions are as follows:

- Declare unequivocal opposition to the use of tobacco products;
- Cooperate with public and private agencies to promote a "Smoke-Free Society by the Year 2000";
- Seek elimination of federal price supports for tobacco growing;
- Support legislation requiring rotating health warning labels for cigarette packages;
- Declare snuff and chewing tobacco a health hazard and seek legislation to require warning labels and an electronic media advertising ban for "smokeless tobacco";
- Support legislation requiring labeling of ingredients added to the tobacco in cigarettes;
- Join with other concerned groups in favor of an increase in the cigarette tax to 32¢ per pack;
- Urge newspapers and magazines to refuse voluntarily to accept tobacco product advertisements;

- American Medical Association -
Department of Federal Legislation, Division of Legislative Activities

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- Protect the health of youth in the military by opposing the availability of low-cost cigarettes on military bases;
- Seek legislation to prohibit smoking on any public transportation;
- Seek legislation to restrict smoking in public facilities (restaurants, public buildings, etc.);
- Support legislation for developing a "fire-safe" cigarette;
- Seek legislation to prohibit distribution of tobacco product samples by mail;
- Develop state and local model legislation to prohibit distribution of free cigarette samples on public property;
- Urge stricter rules to limit smoking aboard aircraft;
- Urge all hospitals, offices, and other medical care facilities to declare their premises off-limits to smoking;
- Prohibit smoking at all AMA meetings;
- Removed cigarette vending machines from AMA headquarters;
- Develop printed material and public service announcements on the hazards of smoking;

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Senator STEVENS. The next witness is Robert J. Lewis, senior vice president for Federal relations of the Tobacco Institute, who is accompanied by Dr. Sorell Schwartz, professor of pharmacology at Georgetown University, and Dr. Philip Witorsch, clinical professor of medicine, Division of Pulmonary Diseases at George Washington University Medical Center.

TESTIMONY OF ROBERT J. LEWIS, SENIOR VICE PRESIDENT FOR FEDERAL RELATIONS, THE TOBACCO INSTITUTE, ACCOMPANIED BY SORELL L. SCHWARTZ, PH.D., PROFESSOR OF PHARMACOLOGY, GEORGETOWN UNIVERSITY, AND PHILIP WITORSCH, M.D., CLINICAL PROFESSOR OF MEDICINE, DIVISION OF PULMONARY DISEASES AND ALLERGY, GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER

Senator STEVENS. Mr. Lewis, are you going to present a statement first or will Dr. Schwartz?

Mr. LEWIS. I will go first, Mr. Chairman.

Mr. Chairman, my name is Robert Lewis. I am senior vice president for Federal relations of the Tobacco Institute, a trade association of major U.S. manufacturers of cigarettes. I appreciate this opportunity to offer the Institute's comments on S. 1440.

As you mentioned, appearing with me are Dr. Sorell Schwartz, professor of pharmacology at Georgetown University on my right, and on my far right, Dr. Philip Witorsch, a physician at the George Washington Medical Center specializing in pulmonary medicine.

As you know, Mr. Chairman, the institute is opposed to this proposal to impose restrictions on smoking in all U.S. Government buildings throughout the world. We believe that such regulation is unwise, unnecessary, unfair and, most likely, unenforceable.

We believe that most Americans—and this certainly includes Federal workers—want less Government regulation, not more. Unless a serious problem has been clearly demonstrated to exist and unless it is clear that the problem can be resolved only through Government intervention, we believe that Government should stay its hand and not create even one more program that might strain our already badly unbalanced budget.

We have several compelling reasons for our opposition, and they can be briefly summarized.

First, legislation in this area is simply unnecessary. Federal departments and agencies that wish to restrict smoking have already proceeded to do so without seeking specific legislative authority. In fact, it is my understanding that the regulations at HHS are now 7 years old.

Furthermore, we detect no evidence of any great demand for legislation which would restrict smoking in the workplace. No substantial segment of the Federal work force, and certainly, no Federal employee labor organization that we are aware of, is asking for enactment of legislation like S. 1440.

Mr. Chairman, I understand a statement has been filed and testimony may be heard this morning by a member of a local union based upon the situation at a single agency. We are not aware, however, that that union's international or any other Federal employee international union has adopted the position of this local.

Second, the major premises or findings of the bill are not facts but, rather, assertions that have been rebutted by eminent scientists, economists, and legal scholars, including the two gentlemen seated here with me. Tobacco smoke in the indoor environment has not been shown to be a significant health hazard. It has not been demonstrated that smoking results in increased costs to employers. And this legislation is not required by court decisions.

Third, we believe that S. 1440 would burden the Government with unmanageable and unenforceable regulations and the American taxpayer with excessive and unnecessary costs.

Finally, the legislation would tend to polarize Federal employees and thus lower morale and productivity. With more than 1 million Federal employees, including 350,000 smokers, involved in jobs in varying working conditions, we believe that this is an issue that should be addressed on the jobsite and not by an edict from Washington.

In short, Mr. Chairman, and with all respect, we believe that this bill is a solution in search of a problem, and a flawed solution at that.

Let me be more specific. In late 1984, the Human Resources Policy Corp. surveyed 1,100 of the Nation's largest and fastest growing firms. It looked at workplace smoking policies in the private sector, and here is what it found:

About two-thirds of the companies do not have a formal smoking policy but, rather, encourage their employees to use common sense and courtesy to solve problems among themselves.

Of these firms, about a third have considered and rejected smoking policies, most often because they believed such policies would not be accepted by their employees or would cause unnecessary conflict.

Of the firms in the private sector that have restricted smoking, most did so with respect to employees who deal with hazardous substances, sensitive machinery, and food, or when required to do so by local law or ordinance.

Results of this survey of company executives challenge the oft-touted notion that there is a great public demand for restrictive workplace smoking policies.

Furthermore, it is difficult to understand the claimed need for this bill in light of the fact that the General Services Administration already has issued regulations restricting smoking in all GSA-controlled buildings and facilities. Most Federal departments and agencies already have regulations restricting workplace smoking or have adopted a structure to deal with smoking in buildings under their control.

In fact, several departments and agencies have stricter smoking restrictions than those required by GSA.

We believe, Mr. Chairman, that many of these restrictions already discriminate unfairly against Federal employees who smoke. In addition, other Federal employees are covered by collective-bargaining agreements that restrict smoking in one way or another.

Would all these agreements and regulations which are now in place be abrogated by S. 1440? We do not know the answer to this question, or the other questions that typically arise when legislation attempts to make policy where policy already exists.

Mr. Chairman, let me turn to the three findings on which the need for this bill is premised. The first charge is that smoking in the workplace is a significant health hazard.

During the past 2 years, this charge has been contradicted by the conclusions of three major scientific conferences involving over 50 eminent scientists. The most recent conference was held in 1984 in Vienna, Austria, in cooperation with the World Health Organization and the International Green Cross. The organizers of that conference were Ernst Wynder of the American Health Foundation and H. Valentin of the Bavarian Academy for Occupational & Social Medicine.

Here is how they summed up the conclusion of that conference: "Should lawmakers wish to take legislative measures with regard to passive smoking, they will, for the present, not be able to base their efforts on a demonstrated health hazard from passive smoking."

Mr. Chairman, I will not read the conclusions that were reached by the other two conferences, which are included in my statement. I would ask that all three proceedings from these conferences be included in the record.

Senator STEVENS. We are not going to print the whole proceedings in this record, Mr. Lewis. I am sure you realize we couldn't do that. I will be happy to include the excerpts that you included in your statement.

Mr. LEWIS. That is fine, Mr. Chairman. We will provide appropriate excerpts.

Mr. Chairman, I think you will agree that this particular issue has been and should be the focal point of your hearings. I would like to include, since Dr. Witorsch will not be reading his entire statement, a conclusion which he reaches, which is as follows:

A careful review of the complete available scientific literature fails to support the conclusion that second-hand smoke is a significant health hazard. Rather, it leads to the conclusion that environmental tobacco smoke is an inappropriate target on which to base management policies for controlling indoor air-related health disturbances. For Congress to reach any other conclusion would be scientifically unfounded and misleading.

A second and equally faulty premise of S. 1440 is that employees who smoke cost more to employers, including the Federal Government, than nonsmoking employees.

A statement, and this is a short statement, that we would like to submit for the record by Prof. Lewis Solomon,¹ and this is a short statement, an economist, currently serving as dean at UCLA's Graduate School of Education and president of the Human Resources Policy Corp. focuses on the issue of whether employers incur costs by permitting smoking in the workplace. As Professor Solomon points out, the claim that workplace smoking results in higher medical costs is based in part on studies that smokers have a higher accident rate than nonsmokers.

Professor Solomon goes on to note, however, that since smokers are found disproportionately among blue-collar workers, they are more likely than nonsmokers to be engaged in strenuous physical

¹ See p. 417.

activities and, therefore, are more likely to be exposed to physical harm through accidents.

Moreover, a recent study of almost 2,000 union representatives and managers in business, industry, and government contradicts the claim that smokers are less productive and therefore more costly to their employers than nonsmokers. Two-thirds of the survey respondents stated that employee smoking has either a positive effect or no effect on worker productivity.

The survey was conducted by Response Analysis Corp. of Princeton, NJ. Another study released in 1984 by University of Minnesota researchers reported similar results, finding people who smoked tend to be more productive than those who do not.

We would like to submit copies of excerpts of these two studies for the record.¹

As to the third finding of S. 1440 which asserts that the bill is required by recent court decisions, the courts consistently have struck down arguments that workplace smoking interferes with the constitutional rights of nonsmokers. In cases in which employees have tried to use the common law to impose smoking restrictions, the courts also generally have sided with the employer.

We have a case cited here in the record, Mr. Chairman.

Indeed, with the exception of a few cases involving handicapped persons, the courts generally have held that employers, including the Federal Government, have no legal obligation to accommodate the demands of individual employees to ban or restrict workplace smoking.

Mr. Chairman, once again, I ask your permission to submit for the record a legal memorandum prepared by our legal counsel, Covington & Burling, analyzing the pertinent court decisions dealing with workplace smoking.

[The memorandum referred to follows:]

¹ The studies referred to may be found in the subcommittee files.

An Assessment of the Current Legal Climate Concerning Smoking in the Workplace

Prepared for Employers and
Interested Citizens by the Law Firm of
Covington & Burling

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Introduction

The Tobacco Institute has for many years regarded as one of its most important functions the dissemination of information concerning the tobacco industry to members of the public. This function has assumed additional prominence of late given the increased level of public debate over the relative rights of smokers and nonsmokers and the asserted health implications of environmental tobacco smoke.

Various special interest groups opposed to smoking have within the past few years launched a concerted and well orchestrated drive to restrict or prohibit altogether smoking by employees at their place of work. As part of that effort, these organizations have distributed tracts to both workers and their employers. These publications generally discuss the current case law in a way that suggests that any employer who refuses to accede to even the most militant demands for a smoke-free environment does so only at the very real risk of being on the losing end of a lawsuit. As becomes readily apparent when the relevant decisions are analyzed in a dispassionate and even-handed manner, this is not the state of the law.

This memorandum was prepared for The Tobacco Institute by the law firm of Covington & Burling, in response to requests from employers seeking guidance concerning accommodations within the workplace of employees who smoke and those who do not. While we believe the analysis that follows is a fair one, we recognize that the skeptical reader may suspect bias and, accordingly, would be pleased to make available upon request the full text of all cases and other authorities cited. After reviewing this underlying source material, the reader can draw his own conclusions concerning the relative objectivity of this presentation and those proffered by the various antismoking groups. All that we ask is that the subject be approached with an open mind.

I. General Background

Smoking in the workplace is not, of course, anything new. What is new, and most unfortunate, is the effort that has been made by a few groups and individuals during the past few years to use the courts to compel compliance with their anti-smoking views. With several limited exceptions, however, the courts have not proved hospitable to such attempts regardless of the particular legal theory advanced.

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II. The Courts Have Unanimously and Emphatically Rejected the Contention That the United States Constitution Gives Nonsmokers the Right to Compel Public Employers to Prohibit Smoking in the Workplace

The United States Constitution imposes various restrictions on the power of the federal and state governments to regulate the lives of their citizenry. Plaintiffs who have attempted to elevate their own personal antismoking crusades against public entities to constitutional dimensions have uniformly been rebuffed. The leading case is *Gasper v. Louisiana Stadium and Exposition District*, 418 F. Supp. 716 (E. D. La. 1976), *aff'd*, 577 F.2d 897 (5th Cir. 1978), *cert. denied*, 439 U.S. 1073 (1979). There a group of nonsmokers sued to compel the authorities who manage the Louisiana Superdome to prohibit smoking during sport and other public events. In support of their demand, the plaintiffs claimed a constitutional right to a smoke-free environment, relying on the First Amendment (freedom of speech); Fifth and Fourteenth Amendments (due process right to life and liberty); and Ninth Amendment (which protects unspecified but so-called "fundamental" rights).

The District Court unequivocally rejected any constitutional basis for imposing restrictions on smoking in a decision that was in all respects affirmed by the Court of Appeals. Responding to the First Amendment claim, the court found that "the State's permissive attitude toward smoking in the Louisiana Superdome adequately preserves the delicate balance of individual rights without yielding to the temptation to intervene in purely private affairs." 418 F. Supp. at 718. In rejecting the due process claims, the court concluded that

to apply the Fifth and Fourteenth Amendments to prohibit smoking—

"would be creating a legal avenue, heretofore unavailable, through which an individual could attempt to regulate the social habits of his neighbor. This Court is not prepared to accept the proposition that life-tenured members of the federal judiciary should engage in such basic adjustments of individual behavior and liberties." *Id.* at 721.

Finally, the court rejected any "fundamental right" theory, holding that for a court to find such a constitutional right to be free of tobacco smoke—

"would be to mock the lofty purposes of such amendments and broaden their penumbral protections to unheard-of boundaries. . . . To hold otherwise would be to invite government by the judiciary in the regulation of every conceivable ill or so-called 'right' in our litigious-minded society. The inevitable result would be that type of tyranny from which our founding fathers sought to protect the people by adopting the first ten amendments to the Constitution." *Id.* at 721-22.

Other courts have likewise summarily rejected constitutional challenges to smoking in public places, including places of work. See *Federal Employees for Non-Smokers' Rights (FENSRI) v. United States*, 446 F. Supp. 181 (D.D.C. 1978), *aff'd*, 598 F.2d 310 (D.C. Cir.), *cert. denied*, 444 U.S. 926 (1979) (action to restrict smoking in federal buildings); *GAASP v. Mecklenburg County*, 42 N.C. App. 225, 256 S.E.2d 477 (1979) (action to compel the prohibition of smoking in county buildings and facilities). Most recently, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal of a complaint alleging that an employer's refusal to provide a

III. Cases Involving Efforts by Nonsmoking Federal Employees to Obtain Benefits Under Particular Federal Statutes Provide No Support for Any Restriction on Smoking in the Private Workplace

smoke-free workplace violated plaintiff's First Amendment rights because "the smoke interfered with his ability to think." *Kensell v. State of Oklahoma*, 716 F.2d 1350, 1351 (1983). Relying on the earlier cases discussed above, the court easily concluded that the plaintiff could prove no set of facts that would entitle him to recover:

"We are certain, however, that the United States Constitution does not empower the federal judiciary, upon the plaintiff's application, to impose no-smoking rules in the plaintiff's workplace. To do so would support the most extreme expectations of the critics who fear the federal judiciary as a superlegislature promulgating social change under the guise of securing constitutional rights." *Id.* at 1351.

The case law thus establishes beyond peradventure that the Constitution provides no support for any asserted right by a nonsmoker to dictate workplace conditions to his employer and fellow employees.*

*In contrast to the unavailing efforts by antismoking groups described above, constitutional challenges to legislative enactments that impose restrictions on smoking in public places have met with success in recent years. See, e.g., *State of Florida v. Burton*, No. 80-999CO-A-42 (Fla. Cir. Ct. 1981) (ordinance restricting smoking in public places held to be unconstitutionally vague and indefinite, an unlawful delegation of legislative authority to private persons, and an unreasonable exercise of the police power); *Aford v. City of Newport News*, 220 Va. 584, 260 S.E.2d 241 (1979) (ordinance restricting smoking in restaurants held void as an unconstitutional exercise of police power lacking any rational basis); *Greater Rockford Food Services v. Orthoefer*, No. 76-2447 (Ill. Cir. Ct. 1976) (ordinance restricting smoking in public places struck down as unduly vague and in violation of the constitutional guarantee of equal protection).

Two fairly recent federal court decisions have been widely promoted by antismoking activists as supporting an asserted universal right to a smoke-free workplace—*Parodi v. Merit Systems Protection Board*, 690 F.2d 731 (9th Cir. 1982), and *Vickers v. Veterans Administration*, 549 F. Supp. 85 (W. D. Wash. 1982). This reliance is misplaced since both cases involved claims by federal employees that their alleged hypersensitivity to tobacco smoke made them "disabled" or "handicapped" within the meaning of particular statutes applying only to the federal government or to entities receiving federal aid. The cases thus have no relevance to the question whether private employers have an obligation to provide a smoke-free work environment. In *Vickers*, moreover, the court expressly declined to find that the federal government had any duty "to make 'reasonable accommodations' to plaintiff's sensitivity to tobacco smoke." 549 F. Supp. at 87.

IV. The Common Law Right to a Safe Working Environment Provides Little if Any Support for the Right of an Employee to Compel His Employer to Provide a Smoke-Free Workplace.

Precluded from even advancing the constitutional and statutory arguments discussed above, a few militant antismokers employed in the private sector have sought to use the general common law to compel smoking restrictions. Only one case has actually prohibited smoking in the workplace based on this theory. Although decided by only a lower state court, that case, *Shimp v. New Jersey Bell Telephone Co.*, 145 N.J. Super. 516, 368 A.2d 408 (N.J. Super. Ct. Ch. Div. 1976), has become the rallying cry for antismoking groups who bill it as heralding the judicial wave of the future. Here once again, rhetoric obscures fact.

In *Shimp*, a secretary who produced evidence that mere passive inhalation of cigarette smoke by her induced a severe allergic reaction sought to have smoking enjoined in the area where she worked. Finding that the employer had a duty under the common law to provide a work area free from unsafe conditions, the presiding judge directed the defendant employer "to provide safe working conditions for plaintiff by restricting the smoking of employees to the nonwork area presently used as a lunchroom." 368 A.2d at 416. The weight of this determination as legal precedent is, however, seriously undermined by several factors.

A key determinant of the outcome in *Shimp* was the lack of any active defense by New Jersey Bell, which filed no answer or affidavits in opposition to the plaintiff's request for an injunction. It is not surprising, therefore, that the court ruled in favor of the plaintiff in an opinion that in fact bears a close resemblance to her brief. That the result in *Shimp* might well have been different had that action not been so one-sided, and presented a true "case and controversy," is strongly suggested by the dismissal of an identical complaint subsequently filed by *Shimp's* attorney before the same judge on behalf of another New

Jersey Bell employee. *Mitchell v. New Jersey Bell Telephone Co.*, No. C-4159-76 (N.J. Super. Ct. Div.). The only difference between the two cases is that in *Mitchell* the employer elected to defend itself and filed a motion to dismiss. Perhaps recognizing the difficulty of prevailing in a true adversary context, plaintiff's counsel failed to respond and the motion was granted.

As summarized by one commentator, additional considerations even further erode the authority of *Shimp*:

"One can perceive, then, that *Shimp* is made up of many important facts, the absence of any of which could persuade a court to find differently. Further, this is not the Supreme Court in New Jersey, nor has the decision been followed by any other courts in New Jersey or elsewhere. Moreover, there are several things the New Jersey court did not consider. It did not consider the cost of allowing employees extra time off to smoke.

"Furthermore, although the court held that the plaintiff did not assume the risk of her injuries by staying on the job, the court did not consider whether the employer was liable under a fellow-servant rule. That is, when another employee is negligent in smoking near the allergic employee, the common law states that the other employee's negligence wipes out the employer's negligence.

"Finally, the court's use of an injunction in this area is unprecedented. Injunctions like the one in *Shimp* are relatively scarce; the courts look for irreparable injury, clear rights, and absolutely no other remedies." Blackburn, *Legal Aspects of Smoking in the Workplace*, 31 Labor L.J. 564, 568 (1979) (footnote omitted).

Easily the most telling refutation of any expansive reading of *Shimp* is found in a subsequent case decided by a New Jersey state court of equal status. *Smith v. Blue Cross & Blue Shield of New Jersey*, No. C-3617-81E (N.J. Super. Ct. Ch. Div. 1983). There, as in *Shimp*, an employee alleged hypersensitivity to cigarette smoke in the working environment and sought, among other things, to force her employer to promulgate and enforce a variety of no-smoking regulations. In denying such relief, the court addressed the scope of *Shimp* in the following restrictive terms:

"Insofar as the *Shimp* case is read by some as requiring an employer to institute Draconian measures to smoking employees I think it has to be viewed somewhat skeptically and cautiously. I myself have no problem at all with the basic concept of *Shimp*, that a safe workplace is required, but I must say it seems to me that some of the prohibitions contained in the *Shimp* case are too sweeping and go well beyond what is necessary to ensure a safe working place." Transcript of Trial Proceedings of August 18, 1983, at 8.

And while clearly sympathetic to the psychological supersensitivity of the plaintiff to tobacco smoke, the *Smith* court went on to observe that "someone who has that severe a reaction to that simple and that manageable level of smoke exposure is someone who has a specific personal problem." *Id.* at 15. The court concluded that, under such circumstances, "[i]t simply is not right in terms of the way in which human beings have to relate to one another, that because someone is as sensitive as that that all the rest of the world has to go through a tightly-controlled regimen of smoking discipline." *Id.* More generally, the court rejected any obligation by an employer to accede to the demands of hypersensitive non-smokers by defining the relevant duty of care in the following terms:

"What the employer must do is accommodate the needs of the typical employee who is a typical nonsmoking employee and that person must be given not only a healthy environment but one which is reasonably pleasant in the fullest sense, and that sort of a person must be protected from offensive smoking and from offensive smoking habits, but what we are being asked to do here goes well beyond that. It's well beyond supplying a safe workplace, goes well beyond supplying a reasonably-pleasant workplace, goes well beyond accommodating a problem or handicap. What we are really being asked for here is to impose upon every employee . . . who wishes to smoke a regime, a form of discipline which goes well beyond the reasonable, all under the guise of catering to the very particularized needs of a supersensitive person. That is not appropriate." *Id.* at 10-17.

Especially when viewed in light of *Smith*, the *Shimp* decision thus constitutes dubious authority even in New Jersey for any wide ranging restrictions on smoking in the workplace.

A recent case from another jurisdiction likewise rejects the right of a hypersensitive individual to dictate overall smoking policy to his employer. In *Gordon v. Raven Systems & Research, Inc.*, 462 A.2d 10 (D.C. App. 1983), the lower court had directed a verdict for the defendant employer in a wrongful discharge action brought by a former employee claiming a special sensitivity to cigarette smoke who was terminated when she refused to work in an area occupied by other employees who smoked. Finding no need to pass on the suitability of *Shimp* as substantive law, the *Gordon* court rejected plaintiff's claim that "as an employee with a particular sensitivity to cigarette smoke, she was owed a

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common law duty to a workplace free of tobacco smoke." 462 A.2d at 15. The court went on to hold:

"[T]he common law does not impose upon an employer the duty or burden to conform his workplace to the particular needs or sensitivities of an individual employee. Without such a duty, appellant can complain of no wrong." *Id.*

The only case to cite *Shimp* approvingly in support of a common law right to eliminate smoking from the workplace ended in judicial repudiation of allegations that environmental tobacco smoke constituted a health hazard. In *Smith v. Western Elec. Co.*, 643 S.W.2d 10 (Mo. App. 1982), an intermediate state court ruled in favor of an employee seeking to prevent his employer from exposing him to tobacco smoke in the workplace. The petition alleged, among other things, that the plaintiff was hypersensitive to tobacco smoke, that "second-hand smoke" was harmful to the health of all employees, and that the defendant employer had available reasonable alternatives to avoid what was characterized as a continuing breach of its duty to provide a safe place to work. *Id.* at 12. Although the *Smith* court found that the plaintiff should have been allowed the chance to prove these claims at trial and remanded for further proceedings, the rationale underlying that determination and the reason for its limited value as legal precedent was the court's assumption that all of the plaintiff's allegations were true.* For the plaintiff to prevail at trial, he would have to actually prove by a preponderance of the evidence the truth of each of his allegations, including the contention that environmental tobacco smoke adversely impacts the health of all employees. Seen in this light, the Missouri *Smith* case merely reinforces the direct holdings in *Smith v. Blue Cross & Blue Shield of New Jersey* and *Gordon v. Raven Systems & Research, Inc.*, discussed earlier, that the common law requires at most only that an

employer provide a workplace that is reasonably safe for normal employees and need not meet the additional demands of employees with actual or alleged idiosyncratic health conditions.

The limited impact of the procedural ruling by the intermediate court in *Smith* is illustrated by subsequent developments on remand to the trial court. There, AT&T Technologies, Inc., the corporate successor to the original defendant, filed a motion to dismiss the action on the grounds that: (1) an employer does not have the common law duty to take extraordinary measures to accommodate the hypersensitivity of a particular employee; and (2) the case for injunctive relief had, in any event, been rendered moot by the plaintiff's retirement. After hearing all the evidence and studying the extensive submissions by the parties the trial court denied plaintiff's request for relief and entered judgment in favor of AT&T. In its Findings of Fact, Conclusions of Law and Judgment dated April 23, 1985, the court noted that it "specifically does not believe or find from the evidence that the tobacco smoke at plaintiff's former workplace was harmful or hazardous to his health" or to the health "of the other employees in that area." Accordingly, the court held that defendant had not breached any duty owing to plaintiff by refusing to segregate smokers from nonsmokers and to limit smoking to non-work areas of the building.

"The minimal requirements for testing the legal sufficiency of a complaint reflect a traditional judicial reluctance to dismiss a case on the pleadings without giving the plaintiff his day in court. This attenuated standard of review also explains in large part the similar denial by a Massachusetts court of a motion to dismiss a complaint seeking to enjoin smoking in the workplace. *Lee v. Department of Public Welfare*, No. 15385 (Mass. Super. Ct. 1983). There, the court likewise assumed the truth of all of plaintiff's allegations in opining that 'this court cannot say that plaintiff's claim fails to make out a legally cognizable basis for relief.' Slip Op. at 3.

IV. The Rights of Smokers Must Be Considered Before Smoking Restrictions Are Imposed in the Workplace

While championing the rights of nonsmokers, most of the literature distributed by antismoking groups ignores altogether the corresponding rights of smokers. The courts, however, have not been so reticent. Even the *Shimp* court recognized that "[i]n determining the extent to which smoking must be restricted the rights and interests of smoking and nonsmoking employees alike must be considered." 368 A.2d at 416. In *Vickers*, the court similarly appreciated that "employees who smoke have certain rights which must be balanced against the desire of plaintiff that his working environment be completely free of tobacco smoke." 549 F. Supp. at 89. The court in *Smith v. Blue Cross & Blue Shield of New Jersey* made the same point more colorfully by first acknowledging that smokers "are after all human beings with needs and feelings like everyone else," and then concluding:

"[T]here simply is no warrant and no justification as a matter of civilized management of a work force to treat smokers as though they were moral lepers and to banish them to a remote isolated area of the work place and that when one gets right down to it is essentially what the plaintiff it seems to me is asking for in this case." Tr. at 13-14.

We submit that in balancing the rights of one or a few individuals claiming hypersensitivity to tobacco smoke against the rights of all those employees who do smoke on the job, the vast majority of whom do so in an unobtrusive manner not offensive to their nonsmoking neighbors,

the equities favoring the smokers cannot be ignored. As put by the New Jersey court in *Smith*:

"[I]f [plaintiff is] this sensitive, then it really reaches the stage where it's up to her to accommodate the majoritarian employee both nonsmoking and smoking, and develop some special work habits of her own. If she can't accommodate to what the employer has been willing to do here, then she really should not work in that place." Tr. at 17.

Along similar lines, the court in *Kensell* characterized the competing equities as follows in rejecting any constitutional right to a smoke-free workplace:

"In essence, the plaintiff has voluntarily accepted employment in an office in which he knew or should have known other employees smoke. Upon discovering that he is allergic to smoke or that it exacerbates his health problems, instead of quitting or transferring he seeks to force his employer to install a no-smoking rule in the office or to segregate smokers from non-smokers." 716 F.2d at 1351.

Before attempting to restrict smoking in the workplace, we believe that an employer likewise should consider the rights of smokers—and also consider how smokers are likely to react to any drastic change in their work environment imposed by management. Apart from these equitable and practical considerations, the employer tempted to capitulate to the extreme demands of antismoking activists may confront more positive legal barriers. In *Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board*, 459 A.2d

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452 (Pa. Commw. 1983), the court held that since smoking is a term and condition of employment, an employer cannot impose smoking restrictions unilaterally when a collective bargaining agreement is in effect. As stated by the court:

"The subject of whether employees may smoke at their workplaces appears to be at the center of those 'subjects properly described as 'conditions of employment' and to be entirely unrelated to those entrepreneurial or managerial judgments fundamental to the basic direction of the enterprise and removed from the scope of mandatory bargaining. . . ." *Id.* at 455.

Other cases accord with this result. See, e.g., *Butcher Boy Refrigerator Door Co. v. NLRB*, 290 F.2d 22 (7th Cir. 1961) (imposition of a smoking ban in work areas, along with other evidence of antiunion feelings, constituted an unfair labor practice).

Considered in its entirety, the relevant case law provides virtually no support for the efforts of a few militant antismokers to impose their views on employers and fellow workers. We believe that the employer confronted with such demands is best advised to: (1) determine whether the petitioners are acting for themselves or as surrogates for an antismoking group; (2) establish whether the petitioners have attempted to reach a sensible accommodation with smokers in their immediate work areas and, if not, encourage and offer to mediate this effort upon request; and (3) consider relocating the complaining nonsmokers to a work area occupied by fewer smokers.

Should all of these reasoned attempts at compromise fail and litigation be threatened, we recommend that the employer realistically evaluate the overall situation in light of: (1) the relevant case law and rights of smokers discussed above; (2) the probable effect of any broad smoking restriction on the morale and productivity of smokers; (3) the costs of imposing and continually policing such restrictions; (4) the possibility that if prohibitions are instituted, aggrieved smokers will bring their own legal action alleging discrimination; and (5) whether smoking restrictions unilaterally imposed by management would violate any collective bargaining agreement.

We believe that, in the final analysis, decisions concerning smoking in the workplace are most appropriately committed to the good sense and common courtesy of smoking and nonsmoking employees. Only when compromise at this individual level proves impossible should the employer intervene and then only to the minimum extent necessary to accommodate reasonably the legitimate interests of both groups.

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Mr. LEWIS. Finally, Mr. Chairman, let me turn to the requirements of S. 1440. The bill would direct the Administrator of the General Services Administration to implement regulations designating smoking and nonsmoking areas "in any building under the jurisdiction and control of a department or agency of the United States."

But some serious questions arise about how this will be accomplished.

How is this new Federal smoking law to balance the various needs in departments as different as Defense on the one hand and Health and Human Services on the other?

Are the considerations for restrictions the same in our Embassies abroad as in our VA hospitals?

Is the GSA Administrator going to dictate where foreign dignitaries may or may not smoke when visiting the State Department or the White House?

What makes the GSA Administrator the right person, if there is any "right" person, to resolve the countervailing needs in such widely varying work environments?

Or if it is intended that this authority be delegated, what is the need for legislation at all, since agencies and departments have already implemented, for the most part, their own regulations?

Mr. Chairman, why not let each department and agency continue to handle the issue on its own without creating a new antismoking bureaucracy?

Mr. Chairman, if the American people have delivered a message to their Government in the past two Presidential elections, we believe it is this: That Americans are disenchanted with the high cost and intrusiveness of Government programs. They want big government off their backs, out of their pocketbooks and away from their personal behavior.

In that context, we believe that S. 1440 is a step in the wrong direction. However well-intended, it stands for overspending and overregulation at a time when the public wants less of each.

We urge you and this subcommittee to consider whether the personnel relationships between workers who smoke and their fellow workers who do not smoke should be regulated by Government fiat or by the rules of common sense, common courtesy, good will, and mutual respect.

Thank you for your time and thank you for your consideration. Senator STEVENS. Dr. Schwartz, do you have a statement?

Mr. SCHWARTZ. Thank you, Mr. Chairman. My name is Sorell Schwartz. I am professor of pharmacology at Georgetown University. I hold a Ph.D. in pharmacology and have specialized in toxicology throughout my career. My special emphasis has been on cause-and-effect analysis, risk analysis, and the absorption, distribution, and elimination of chemical substances. Faculty members at Georgetown often report studies or speak out on various issues and are encouraged to do so by the university in a responsible manner. But they do so without representing the university.

I am chairman of a group of about a dozen faculty members from a number of universities who, at the request and expense of the Tobacco Institute, exhaustively reviewed the pertinent scientific literature concerning exposure to environmental tobacco smoke, par-

ticularly in the workplace, and possible health effects. Individual members of our group have expertise in the disciplines of toxicology, epidemiology, industrial hygiene, and pulmonary medicine. Specifically, we were asked independently to evaluate the primary data focusing on exposure to environmental tobacco smoke and chronic health disturbances and to consider the place that environmental tobacco smoke has in the entire problem of indoor air pollution.

My purpose here today is to present the essence of our group's opinion on environmental tobacco smoke, which is currently being prepared for publication in the scientific literature. There are a few preliminary points that deserve mention because they represent the conditions for my appearance.

One, the opinions that I am presenting today are presented as part of our study for the Tobacco Institute, but they are our independently held opinions.

Two, as such, I am appearing here as a spokesman for the group of scientists with whom I have been working. I am not a spokesman for the Tobacco Institute.

Three, I do not take issue with the position that active smoking per se is associated with significant health disturbances. Nothing that I say here today about environmental tobacco smoke exposure is intended to imply a similar opinion about active smoking. Indeed, my colleagues and I consider environmental tobacco smoke exposure and active smoking to be toxicologically distinct phenomena.

Four, I am not taking a position on behalf of our group for or against the bill before you. I am only commenting on the proposed finding in the bill that numerous studies have shown environmental tobacco smoke to be a health hazard.

Five, I recognize that there are people here, laymen and scientists alike, for whom elimination of environmental tobacco smoke represents a personal agenda. My testimony does not address that position except, of course, to caution against the gerrymandering of scientific data to gain support for the agenda.

Six, finally and most important, our study was directed at the question of demonstrable chronic health effects of environmental tobacco smoke and not to the question of whether tobacco smoke is or can be a nuisance or bothersome to some people in some circumstances.

In undertaking our investigation, we were aware that there is controversy in the scientific literature concerning whether environmental tobacco smoke can have chronic health effects. We also were aware that three international workshops on the subject had found no persuasive evidence of chronic health effects or had judged the available data to be inconclusive. We were aware, in addition, of extensive media reports claiming that environmental tobacco smoke had been found to affect people's health adversely.

Perhaps most importantly, we knew that as we undertook our study and in order to arrive at an opinion, we had to evaluate the available data ourselves. Anyone who has not fully evaluated all of the data and applied recognized evaluation techniques is not in a position to reach an independent conclusion; that individual can only report on other people's conclusions.

When we looked at the studies in the literature addressing the possible health effects of environmental tobacco smoke, the most significant problem we found was that they generally lacked appropriately validated exposure estimates or dosage measurements. This deficiency has been noted by others and is, in fact, the major point of consensus emerging from independent reviews, both by individual scientists and groups of scientists. Parts of this consensus are the three workshops on the subject, including those organized by the National Institutes of Health and the World Health Organization. In the absence of adequate dosage information, it is difficult to reach scientifically reliable conclusions regarding cause and effect relationships.

It is also generally recognized that environmental tobacco smoke is not simply a diluted form of mainstream or sidestream tobacco smoke. It is a component of the complex mixture of chemicals known as indoor air pollution and is physically, chemically, and toxicologically distinct from mainstream and sidestream tobacco smoke.

Measuring environmental tobacco smoke is part of the mosaic of measuring indoor air components. The accurate and precise measurement of indoor air components necessary for use in exposure assessment is difficult, tedious and expensive.

Such measurements are affected by temperature, barometric pressure, relative humidity, air leakage through cracks and windows, doors and other building components, use of combustion devices, human activity levels, building design, operation and maintenance procedures and ambient air pollution levels. The idea that exposure to environmental tobacco smoke can be estimated by measuring particles in the air and equating that to the number of cigarettes is one that cannot be supported within the conventional rubric of environmental monitoring.

In addition to the problem associated with documenting exposure, our group was impressed by serious flaws in design and methodology associated with the studies of health effects of environmental tobacco smoke: those purporting to show an effect and those purporting to show no effect.

Dr. Witorsch has submitted a statement discussing the studies focusing on respiratory and cardiovascular function. I will consider another area: The claim that exposure to environmental tobacco smoke is associated with an increase in lung cancer among non-smokers.

To say that it is easy to underestimate the difficulty of doing acceptable epidemiologic research and to overestimate the meaning of a study that purports to compare a control population with an exposed population is almost an article of faith today. We have carefully reviewed, in detail, all of the studies relating to environmental tobacco smoke and lung cancer. In addition, we have submitted the studies to epidemiologists outside of our group. Those individuals did not know the purpose of the review they were being asked to undertake nor the identity of the sponsor.

Without exception, every epidemiologist who has reviewed the pertinent studies has agreed with the conclusion of our group that the studies to date do not support a casual inference relating exposure to environmental tobacco smoke to an increased incidence of

lung cancer. Some of the epidemiologic studies that have been represented as establishing an environmental tobacco smoke/lung cancer relationship are not usable to any degree because they were poorly described, poor by done, did not use control groups, did not verify the nature and extent of exposure, did not verify the histological nature of the disease or involved other inadequate documentation. The fact that a group of poorly designed and conducted studies may point to a similar conclusion does not necessarily enhance their validity.

It is an uncompromising rule of scientific endeavor that no type of statistical analysis can salvage data from poorly designed and improperly conducted studies.

The two largest and most quoted studies on the relationship between environmental tobacco smoke and lung cancer are one from Japan by Hirayama and an American Cancer Society study by Garfinkel on American women. Both involved studies of lung cancer incidence in the nonsmoking wives of smoker husbands. Hirayama claimed to find an increase in lung cancer incidence. Garfinkel reported no statistically significant increase.

There is a substantial amount of published and unpublished opinion that the Hirayama study suffers from a number of serious methodological and inferential problems, including patient selectivity, definitions of smoking exposure, occupational considerations, and analytical methods used.

The Garfinkel study has also been criticized for methodological problems. Given the current state of the scientific literature, one can assert a causal relationship between exposure to environmental tobacco smoke and lung cancer, only if one is willing to ignore the available data and mainstream epidemiologic opinion.

That is not to say that such a causal inference has not been made and then promoted. One highly publicized paper, written by James Repace and Alfred Lowery, claimed that exposure to environmental tobacco smoke is responsible for between 500 and 5,000 cancer deaths per year in the United States.

The Repace/Lowery computations involved a notable misunderstanding of the power and usability of epidemiological data and risk analysis techniques. Again, that is not an isolated opinion. It is the relatively consistent opinion of those involved in epidemiological and risk analysis research who have reviewed the Repace/Lowery paper and the studies on which Repace and Lowery relied in making exposure assumptions and a causal inference.

At the outset, I stated that we considered environmental tobacco smoke a part of indoor air pollution. I should emphasize that we consider indoor air pollution, in general, to be a serious, scientific, and public policy issue.

However, it is clear that environmental tobacco smoke is only one of a number of factors that influence indoor air quality. Those factors include outdoor air quality, building structure, building materials, consumer products, appliances, cleaning substances, combustion devices, ventilation rate, and occupant activity.

In the past 10 years, health complaints related to indoor air pollution have increased dramatically. A number of public and private groups have recognized the complexity of the indoor air pollution problem. In fact, there is some evidence that attempts to use envi-

ronmental tobacco smoke as a surrogate for indoor air pollution has been counterproductive.

For example, requiring lower ventilation rates in nonsmoking areas has led to proposed ventilation rates for those areas that are clearly inimical to health with respect to other indoor air pollutants, including microbial agents. The problem of indoor air pollution in the long run is a problem of adequate ventilation, irrespective of whether or not smoking is permitted in the area.

There are studies that show that smoking restrictions have not led to less indoor air-related health complaints. One of those is a survey by NIOSH concerning indoor air quality that indicated that about 50 percent of the health complaints were related to high carbon dioxide levels, while only 2 percent were related to smoking.

We suggest that if there is a concern about the quality of indoor air in Government buildings, the GSA should be directed to study the ventilation rates in those buildings and to evaluate the adequacy of that ventilation for prevention of what has been termed the "sick building syndrome." That is more likely to be beneficial than directing efforts solely at environmental tobacco smoke.

Mr. Chairman, I appreciate your having permitted me to appear here today, and I would be pleased to respond to any questions that you may have.

Thank you.

Senator STEVENS. Thank you very much.

First, Dr. Schwartz, I have high regard for the institution with which you are associated. I do have a question. You say you are commenting on the proposed findings in the bill that numerous studies have shown environmental tobacco smoke to be a health hazard.

You don't question that statement, do you, that there are numerous studies that show that?

Mr. SCHWARTZ. Yes, I do, sir.

Senator STEVENS. You disagree with the studies, but there are numerous studies. We have had them presented to the committee. It is a statement of fact that there are numerous studies that show that connection.

You disagree as a matter of opinion with the basis of their conclusions—Repace, for instance as you mentioned. But those studies are still there.

Mr. SCHWARTZ. I don't want to get into a semantic distinction, but there is one. I don't disagree there are numerous studies in the literature which propose that environmental tobacco smoke is a health hazard, but I do disagree with the statement that they show that.

In other words, looking at the data, we do not believe that the available data show that there is a recognizable, significant health hazard for chronic disease—referring to chronic obstructive pulmonary disease of lung cancer and the like.

Senator STEVENS. You mentioned the Geneva and the Vienna conferences. I am informed that in neither conference did they dispute the finding that involuntary smoking causes respiratory problems in young children. Do you realize that?

Mr. SCHWARTZ. Yes.

Senator STEVENS. Well, now, is that not a finding?

Mr. SCHWARTZ. I think that there are a group of papers which claim that children exposed in the home to mothers who smoke have an increased incidence of respiratory disease. That is a conclusion that has been made in the papers.

But that is not a workplace exposure. That is exposure in the home.

Senator STEVENS. Maybe we have a semantic difference here. Do you differentiate between sidestream smoke and environmental smoke?

Mr. SCHWARTZ. Yes, sir, definitely.

Senator STEVENS. How do you differentiate those?

Mr. SCHWARTZ. Sidestream smoke has been measured when immediately trapped as it comes off the cigarette. I assume there has been enough testimony of what sidestream smoke is. That is, it is the material that comes off the cigarette. It has not gone through the length of it, has not been inhaled, if you will.

As the smoke leaves the cigarette and moves away from the cigarette, temperature changes, air flow changes, and the like change the characteristics of the smoke. Environmental tobacco smoke could not be chemically the same as sidestream smoke unless we break some natural laws concerning gas and particle dispersion.

Senator STEVENS. If two people are working in my office and they are literally 4 feet apart—and I would be glad to show you the situation if you want to come see it—one smoking very heavily and the other one is not smoking, that is not environmental exposure, that is sidestream exposure, is it not, within that range of 6 feet?

Mr. SCHWARTZ. Not necessarily. No, sir.

If, in fact, you analyze the smoke 6 feet away from the cigarette and you analyze the sidestream smoke as it has been analyzed as it comes off the cigarette, they would be substantially different. They would have to be.

Senator STEVENS. Isn't that different from the overall amount of smoke in the environment of the office, in general?

Mr. SCHWARTZ. Yes.

Senator STEVENS. That is what you are talking about.

Mr. SCHWARTZ. Clearly, as you move away from the cigarette and you have mixing and such, yes, clearly, there is a—it is constantly changing.

But sidestream smoke, as I define it is that which comes off the cigarette and is immediately trapped and analyzed. That smoke which even moves a few feet from the cigarette has to be different because of the cooling and circulation effects.

Senator STEVENS. This committee, long before my bill was introduced, banned smoking in this room. When two people are sitting next to one another, if one were smoking, the other, literally 12 inches away, is subjected to side stream smoke, isn't he?

Mr. SCHWARTZ. Well, he is subjected to environmental tobacco smoke. Again, sidestream smoke refers to the material that is just coming off the cigarette. That is the material that has been analyzed.

If you want to expand the definition of sidestream smoke to be anything that comes off the cigarette, no matter what its distance

is from the cigarette. But the analytical data which has been generated for sidestream smoke would not apply to that definition.

Mr. LEWIS. Mr. Chairman, if I might?

Senator STEVENS. Let me finish, please, with Dr. Schwartz, and then I would be happy to have an exchange with you. I want to ask Dr. Schwartz about this.

We have before us now the findings of the Surgeon General of the United States and his firm, fixed support of this legislation.

We have now the findings and testimony of the American Medical Association. You and your colleague are the first to come forward from the scientific community and dispute those claims, not mine, but the presentations that have been made by the American Medical Association and by the Surgeon General.

They are relying on the same studies that the committee relied on to make that statement in the proposed findings of the bill. Do you dispute the Surgeon General and the AMA and the position that they have expressed here?

Mr. SCHWARTZ. The position they have expressed, Senator, is support for your bill. I am not, and in representing the group, expressing support or opposition to your bill.

Senator STEVENS. If you know Dr. Koop, you would understand that Dr. Koop shares the position of Mr. Lewis that the Federal Government should not be regulating anything that doesn't need to be regulated. He has demonstrated his position with regard to de-regulation.

But he says, in this instance, as does the Administrator of GSA and as does the AMA, that this is a form of regulation that is essential to assure that nonsmokers are not subjected to hazards from smoke.

Mr. SCHWARTZ. I understand the point, and I, again, would like to clarify that ours is strictly a scientific consideration. I don't represent the group as being for or against the bill.

I think that it is clear that the American Medical Association and the Surgeon General are representing the general feeling that smoking causes significant health disturbances. I addressed in my preamble the fact that we don't disagree with that point.

But you must look into and analyze all of the data. Senator, there has been conference after conference on environmental tobacco smoke. They all reach the same conclusion. There is a lot to be decided with regard to the evaluation of the data.

Even the AMA, in its testimony, just preceding mine, referred to a tentative conclusion of an increase in lung cancer from environmental tobacco smoke.

Now, there are various gradations of opinion on the lung cancer issue.

I know of no one who who has reviewed all of the data and has concluded that there is a final causal inference.

The only people I know of who have made that conclusion in the published literature are Repace and Lowery. Implications to the contrary notwithstanding, their conclusions do not represent a consensus of scientific opinion, I find it rather difficult to understand that every group and every workshop that has addressed the problem of environmental tobacco smoke and lung cancer has wrestled

with the inconclusiveness of the data whereas Repace and Lowery come to conclusions.

Some feel a tentative conclusion can be made as the AMA has put it; some feel that the studies are too flawed to make any conclusions. But nobody has said that the causal inference is clear and precise. Yet Repace and Lowery not only have no difficulty in coming to such a conclusion, but they will quantitate, within an order of magnitude, the number of deaths in the United States from that.

Now, I submit, Senator, it is not I or my group which is discordant with scientific opinion, but it is Repace and Lowery.

Senator STEVENS. My memory is that these are places in your area of the University where "No Smoking" signs are posted isn't that right?

Mr. SCHWARTZ. Oh, yes.

Senator STEVENS. In the medical portion of the University, it is posted "No Smoking" in several places.

Mr. SCHWARTZ. Senator, I don't smoke. I sit in no-smoking sections of airplanes and nonsmoking sections of restaurants. I am not dealing with the matter of smoking being uncomfortable, being irritating to people. I am addressing the point of chronic health disturbances.

If it is locally decided to ban smoking in certain areas based on some sort of mutual accommodation, I have no position on that as a scientist, though as a citizen, I think that people should do what they can get along with best.

I am only commenting on the conclusions that there are demonstrable chronic health effects from environmental tobacco smoke.

Senator STEVENS. I am dealing with the problem of people in Los Angeles, in San Francisco, in Florida, in Minnesota, in Alaska, who live in areas where the State and local law has determined that there should be areas designated for both smoking and no smoking in public buildings.

But those laws do not apply to the buildings of the Federal Government. When person who gets used to that concept and the lifestyle of being able to be in a smoke-free environment goes into a Federal building, goes into the Post Office, or goes into a restaurant in a Federal building, he or she suddenly finds that there is no way to object to what they consider to be a violation of their rights to have a smoke-free environment without this law.

Without this law, there is no way to subject those Federal buildings to the same kind of decision made about all other public facilities in the area.

To me, that is unfair. I respect you and your judgment. The only thing I would say to you is I remember sitting here and listening to the testimony concerning the Surgeon General's original finding as to whether or not smoking was hazardous to your health. There were people who raised similar objections at that time.

You don't raise any objection to the conclusion, now, of the Surgeon General that direct smoking is hazardous to health, do you?

Mr. SCHWARTZ. No; I think I indicated that understanding.

Senator STEVENS. I understand. Your statement is clear on it.

Mr. SCHWARTZ. Yes; I would like to make a point about your analogy with the data on active smoking. I understand the analogy

and there is a certain amount of reason to it; but there is also caution with which you must use it. That is, every scientific study that is prolonged and leads to a conclusion, positive or negative, began with data which was suggestive.

In other words, one doesn't pursue a study unless they start with suggestive data. But not all studies which start with suggestive data necessarily end up with the final conclusion that those suggestions were valid.

Senator STEVENS. Your point is well taken.

Mr. Lewis, you wanted to make a comment. Let me ask you first, the Institute still takes the position that the Surgeon General's finding that smoking is hazardous to your health is wrong, does it not?

Mr. LEWIS. Mr. Chairman, I have to defer to the experts on that point on both sides of that issue.

Senator STEVENS. You represent the institute. Does the institute still take the position that smoking is not hazardous to your health?

Mr. LEWIS. Mr. Chairman, I would like to answer that question this way: That I, and so far as I am concerned, the Institute, would defer to the judgment of the experts, and I believe that the current on-going cases indicate that there are experts on both sides.

But I would like to add an observation, if I might. For decades, the question of smoking and health has been brought to the attention of the American people. For over 20 years, cigarette packages themselves have had required labels posted on them. For more than 10 years, the advertising has required warnings. There cannot be anyone left in this country who is unaware of the determination and the determinations of the Surgeon General.

Yet millions of Americans, approximately 50 million adult Americans, continue to make their own risk benefit assessment and exercise their freedom of choice. We believe, Senator, that is the central issue.

Senator STEVENS. Do you see anything in this bill that restricts the freedom of choice to smoke or not to smoke?

Mr. LEWIS. As I understand it, the very essence of the bill would place restrictions on every Federal building. That certainly would restrict the choice of the smoker as to when and where he might exercise that freedom and assumes that there are many instances where he cannot exercise that freedom without offending others.

Senator STEVENS. That is the position of the bill. It is clear. As a smoker, I can tell you. I am a smoker. I do smoke pipes and cigars, and I know how offensive it is to others.

My problem now is beyond being offensive: Is it dangerous to the health of others? And the conclusions brought to this committee by the medical profession, in my judgment—Dr. Schwartz' understanding notwithstanding—are clear. Hazards are posed to the health of the fellow employees of a smoker who smokes in the area where all of them, smokers and non-smokers, work. That is the target of this bill, to provide a smoke-free environment for those people who do not wish to be in an area where there is smoke. We do it in airplanes.

That would be my next question. Have you seen any decrease in the number of people who smoke because of the segregation in airplanes between smokers and nonsmokers?

Mr. LEWIS. I'm sorry. Do I see—

Senator STEVENS. Is there any impact on the cigarette industry by virtue of the decision we have enforced for years that there shall be a place in all airplanes where nonsmokers can sit and not be offended by cigarette smoke?

Mr. LEWIS. Senator, I don't think the impact on the cigarette industry is even an issue.

Senator STEVENS. Well, I do. That is why you are here. [Laughter.]

Mr. LEWIS. Senator, if I may, those who oppose smoking are very vocal, and earlier this week, we heard people talk about child abuse. We heard people talk about slow motion murder. I submit, Mr. Chairman, that those are not the kind of people that are interested in reasonable regulations. These people are interested in a ban.

Senator STEVENS. Do you smoke, Mr. Lewis?

Mr. LEWIS. No; I do not.

Senator STEVENS. Do you have children?

Mr. LEWIS. Yes, sir.

Senator STEVENS. Do you object to people smoking around your children?

Mr. LEWIS. I do not.

Senator STEVENS. You don't see any problem at all with people smoking around your children? The one difference between us and the other mammals that inhabit this Earth is we ought to be able to read, and to learn from research and from the data that is accumulated by mankind as a whole. I don't see how anyone today can not take the position that smoking is harmful to children and that they should not be exposed to smoke.

Mr. LEWIS. Well, Mr. Chairman, as I told you, I don't smoke. My parents did, and I certainly don't consider them to be guilty of child abuse.

Senator STEVENS. I can understand that. The data that has come in has come in considerably after your childhood, however, and it is very, very convincing to me.

As a matter of fact, as I mentioned, the two international conferences that met did not take exception to the conclusion that smoking is dangerous and causes respiratory problems for young children and that smoking should not be permitted around young children.

To my knowledge, there is no dissent from that conclusion in the medical and scientific fields, or among those representatives of these fields who have come before this committee. No one has disputed that.

If that finding alone can stand, then I think the premise of this bill that it is time for us to look as an employee to the question of providing a smoke-free environment for those employees who do not wish to be exposed to smoke is a good one.

Let me go on. I assume that the institute opposed the Florida law which was just put into effect last week, and the laws in Los Ange-

les, San Francisco, and Alaska. I know you opposed the one in Alaska. That is not conjecture. I know that as a fact.

You have opposed these other laws that have been put into place.

Mr. LEWIS. Mr. Chairman, we take the same position in the States that we take here: That this is something that ought to be handled on the local job site and that government regulation, whether it is at the local level or at the State level or the Federal level, is just simply unnecessary, that it is costly, that it leads to restrictions on personal freedom.

Senator STEVENS. There is no reason for us to argue a difference of opinion. I believe that as one who is charged with trying to follow the impact of judicial decisions on the Federal Government, as far as employer responsibility is concerned, it is clear that the courts are now deciding, in case after case, that the Federal Government is liable to certain employees for having failed to provide a smoke-free environment.

The *San Francisco* case last week was a good example. You have cited a couple that went the other way. They are not all totally conclusive, I will say that. But there are several that have ended up with final liability on the part of the United States, and the Federal Government, as employer, is going to pay taxpayers' money for having failed to meet this obligation. Under those circumstances, I think this bill is a reasonable approach to fulfilling that obligation authorizing the designation of places where smoking can take place.

As a matter of fact, this bill requires that designation. You are going to hear testimony from some agencies who are disturbed over the fact that smoking would have to be permitted in certain areas where it is now forbidden. It would permit the designation of smoking areas in all Federal buildings and then require those areas not so designated to be nonsmoking.

I think that is a reasonable position for the agencies of the Federal Government to be required to take. We have had testimony that it would not be expensive. I can tell you from the experience we have had in Alaska, it has not been expensive. Even the cost of the sign has not been as much as people believed it would be. In my judgment, it is time for us to move in this direction. If we can subsidize to the tune of the billions that are requested for the tobacco industry, I think we can extend the few dollars we need on signs to direct people to areas where they can be in a smoke-free environment.

Mr. LEWIS. Mr. Chairman.

Senator STEVENS. Yes, sir.

Mr. LEWIS. I recognize I am not going to change your mind right now. I would like to complete a response to one question you asked, and that is: Why are we here?

We believe the issue is not an impact on our industry. We believe the issue is not the erosion of cigarette sales. We believe—I have stated this before, but I don't think it can be stated too many times—that the issue is erosion of personal freedom, and we feel very strongly, Mr. Chairman, that today the smoker is society's pariah, and who will it be next, and where will this lead, and we believe that is an important question.

Senator STEVENS. I am pleased to have that answer stated. I see nothing in the proposal before this committee that would deny smokers the right to smoke. Under those circumstances, the issue you raise will have to be addressed later, I guess.

Mr. SCHWARTZ. Mr. Chairman, may I clarify one point?

Senator STEVENS. Yes, sir, Doctor.

Mr. SCHWARTZ. On the issue of children in the home, you are quite correct: The workshops point to the fact that this seems to be a problem where the data is more persuasive. So I would question whether the problem is uniformly environmental tobacco smoke in that case.

This does bring up a very important point. One of the things that we, as a result of our review, were happy to see EPA's being interested in is that the whole area of indoor air pollution. If tobacco smoke really causes a problem in the home, in many people's opinion, including ours, the reduction in air flow in the home, especially associated with energy conservation measures, I think we should seriously consider that it is due to inadequate ventilation. For that matter, this applies to the workplace, too.

If we attempt to solve the problem of merely removing tobacco smoke, we could become falsely confident because of the fact that there remain a lot of indoor air pollutants which are not as visible, not as detectable, products of cooking, solvents and the like, which make a significant contribution to indoor air pollution in the home. As long as you have personal interest in this, and you obviously do, it should be something I think you may keep in mind for future thoughts about how our agencies look at the home environment—just an editorial comment.

Senator STEVENS. I appreciate that. I think it is a point well taken. I think the evolution of thought about smoking is really something that everyone ought to think about. I remember so well when my first wife was carrying our children, my first family, she was a smoker. No doctor ever asked her not to smoke or told her that smoking might harm the children she was carrying in any way, and she did not stop smoking.

I think had anyone told her or made that suggestion to her, she would not have smoked. As a matter of fact, I know it, because her older daughter was so told by doctors not to smoke when she was carrying her children, and she stopped. I think that we have to realize that there has been this evolution of thought about smoking and health and the evidence is coming in, Doctor.

It may not be that it is conclusive yet for you, and I respect your judgment on that. But the evidence is coming in. I think it is coming in as strongly now about of the environmental hazards for nonsmokers as it did for the health hazards to smokers themselves. It is only a matter of time until we have that revealed in the data firmly enough so that people such as you in your profession can validate that conclusion. I respect the fact that you cannot validate the conclusion. That is what I take your statement to be, that the conclusion cannot be validated in your judgment on the basis of the studies that have been presented to us so far, notwithstanding the fact that those who did the studies reached the opposite conclusion.

Mr. SCHWARTZ. That is different. I don't think people who did the studies did reach the opposite conclusion, to be frank. I think there

are studies which have been used to demonstrate causal inference, for example of cancer, where the authors did not necessarily reach the conclusion. But I think that is another discussion for another time.

Senator STEVENS. All right. I look forward to it. Thank you very much. Thank you, Mr. Lewis. Dr. Witorsch, your statement will be printed in full in the record. I have looked at it. Thank you very much.

[The prepared statements of Mr. Lewis, Dr. Schwartz, and Dr. Witorsch follows:]

Statement of

The Tobacco Institute
1875 I Street, N.W.
Washington, D.C. 20006

Presented by
Robert J. Lewis
Senior Vice President
For Federal Relations

on

S. 1440

before the

U.S. Senate
Subcommittee on Civil Service,
Post Office and General Services
of the Committee on Governmental Affairs

October 2, 1985

Statement of The Tobacco Institute
on S. 1440 Before the Subcommittee
on Civil Service, Post Office and
General Services of the
U.S. Senate Committee on Governmental Affairs

Mr. Chairman, my name is Robert J. Lewis. I am Senior Vice President for Federal Relations at The Tobacco Institute, a trade association of the major United States manufacturers of cigarettes. I appreciate this opportunity to offer The Institute's comments on S. 1440.

As you know, Mr. Chairman, we are opposed to this proposal to impose smoking restrictions in all U.S. Government buildings throughout the world. We believe that such regulation is unwise, unnecessary, unfair and, most likely, unenforceable.

We believe that most Americans -- and this certainly includes Federal workers -- want less Government regulation, not more. Unless a serious problem has been clearly demonstrated to exist, and unless it is clear that the problem can be resolved only through Government intrusion, we believe that Government should stay its hand and not create one more program to strain our already badly unbalanced budget.

S. 1440 is simple on its face, but we all know how a few words in a Federal statute can spawn hundreds of pages in the Federal Register, to say nothing of the inevitable court decisions, followed by more Government regulations.

We have several compelling reasons for our opposition. They can be summarized briefly.

First, legislation in this area is simply unnecessary. Federal departments and agencies that wish to restrict smoking have proceeded to do so without seeking specific legislative authority. Furthermore, we detect no evidence of any great demand for legislation which would restrict smoking in the workplace. No substantial segment of the Federal workforce -- certainly no Federal employee labor organization that we are aware of -- is asking for enactment of legislation like S. 1440.

Second, the major premises or "findings" of the bill are not facts but rather assertions that have been rebutted by eminent scientists, economists and legal scholars. Tobacco smoke in the indoor environment has not been shown to be a significant health hazard. It has not been demonstrated that smoking results in increased costs to employers. Similarly, this legislation is not required by court decisions.

Third, S. 1440 would burden the Government with unmanageable and unenforceable regulations and the American taxpayer with excessive and unnecessary costs.

Finally, the legislation would tend to polarize Federal employees, and thus lower morale and productivity.

In short, Mr. Chairman, and with all due respect, we believe that S. 1440 is a solution in search of a problem, and a flawed solution at that.

Let me be more specific:

In late 1984, the Human Resources Policy Corporation surveyed 1,100 of the nation's largest and fastest-growing firms. It looked at workplace smoking policies in the private sector. Here's what it found:

o About two-thirds of the companies (63.8 per cent) do not have a formal smoking policy, but rather encourage their employees to use common sense and courtesy to solve problems among themselves.

o Of these firms, about a third (35 per cent) have considered and rejected smoking policies, most often because they believed such policies would not be accepted by their employees or would cause unnecessary conflict.

o Of the firms in the private sector that have restricted smoking, most did so with respect to employees who deal with hazardous substances, sensitive machinery and food -- or when required to do so by local law or ordinance.

Results of this survey of company executives challenge the often-touted notion that there is a great public demand for restrictive workplace smoking policies.

It is difficult to understand the claimed need for S. 1440 in light of the fact that the General Services Administration already has issued regulations restricting smoking in all GSA-controlled buildings and facilities. Most Federal departments and agencies already have regulations restricting workplace smoking -- or have adopted a structure to deal with smoking -- in buildings under their control. In fact, several departments and agencies have stricter smoking restrictions than those required by GSA. We believe, Mr. Chairman, that many of these restrictions already discriminate unfairly against Federal employees who smoke. In addition, other Federal employees are covered by collective bargaining agreements that restrict smoking.

Would all these agreements and regulations which are now in place be abrogated by S. 1440? We do not know the answer to this question -- or the other questions that typically arise when legislation, such as S. 1440, attempts to make policy where policy already exists.

Mr. Chairman, let me turn to the three "findings" on which the need for this bill is premised. The first charge is that smoking in the workplace is a significant health hazard.

During the past two years, this charge has been contradicted by the conclusions of three major scientific conferences, involving over fifty eminent scientists. The most recent conference was held in 1984 in Vienna, Austria, in cooperation with the World Health Organization and the International Green Cross. The organizers of that conference were Ernst Wynder of the American Health Foundation and H. Valentin of the Bavarian Academy for Occupational and Social Medicine. Here is how they summed up the conclusion of that conference:

"Should lawmakers wish to take legislative measures with regard to passive smoking, they will, for the present, not be able to base their efforts on a demonstrated health hazard from passive smoking."

Report of a Symposium on Passive Smoking
From a Medical Point of View, Vienna,
Austria, 3 Infodate No. 8, May 29, 1984.

Other conference or workshops on the subject of environmental tobacco smoke at the National Institutes of Health and at the University of Geneva in 1983 came to conclusions consistent with those made in Vienna.

For example, the report of the NIH conference found that --

"[a] review of the data from the studies which have been carried out or are in progress which address the effects of [environmental tobacco smoke] on the respiratory system suggest that the effect varies from negligible to quite small."

Report of Workshop on Respiratory
Effects of Involuntary Smoke Exposure,
National Institutes of Health, Washington,
D.C., May 1-3, 1983.

The report of the University of Geneva conference, which focused on environmental tobacco smoke and lung cancer, concluded that --

"[a]n overall evaluation based upon available scientific data leads to the conclusion that an increased risk [of lung cancer] for nonsmokers from ETS exposure has not been established."

ETS -- Report from a Workshop on Effects and
Exposure Levels, University of Geneva, Switzerland,
March 15-17, 1983.

A second, and equally faulty, premise of S. 1440 is that employees who smoke cost more to employers, including the Federal government, than nonsmoking employees. That proposed finding presumably is based on the work of William Weis, a Seattle University accounting professor who has spearheaded the campaign to ban smoking and smokers from the workplace. But as Professor Weis himself acknowledged in the May 1981 issue of Personnel Administrator, "skeptics might argue that these numbers are as soft as the underside of a porcupine, and that may be true." Marvin Kristein, an American Health Foundation economist who has appeared before this Committee to urge workplace smoking restrictions, conceded in the March 1983 issue of Preventive Medicine that "we lack meaningful 'case-controlled' company comparisons of experience with smoking employees vs. nonsmoking

employees vs. ex-smokers and the impact on company costs." To achieve a scientific basis for such cost claims, Mr. Kristein admitted, "would require studies and data we do not now -- and most likely will never -- possess."

A statement that we would like to submit for the record by Professor Lewis Solmon, an economist currently serving as dean of UCLA's Graduate School of Education and president of the Human Resources Policy Corporation, focuses on the issue of whether employers incur costs by permitting smoking in the workplace. As Professor Solmon points out, the claim that workplace smoking results in higher medical costs is based in part on studies that smokers have a higher accident rate than nonsmokers. Professor Solmon goes on to note, however, that since smokers are found disproportionately among blue-collar workers, they are more likely than nonsmokers to be engaged in strenuous physical activity -- and therefore are more likely to be exposed to physical harm through accidents.

Moreover, a recent study of almost 2000 union representatives and managers in business, industry and Government contradicts the claim that smokers are less productive and therefore are more costly to their employers than nonsmokers. Two-thirds of the survey respondents stated that employee smoking has either a positive effect or no effect on worker productivity. The survey was conducted by Response Analysis Corporation of Princeton, New Jersey. Another study, released in 1984 by University of Minnesota researchers, reported similar results, finding that people who smoke tend to be more productive

than those who do not. We would like to submit copies of the Response Analysis Corporation and University of Minnesota studies for the record.

As to the third "finding" of S. 1440 which asserts that the bill is required by recent court decisions, the courts consistently have struck down arguments that workplace smoking interferes with the constitutional rights of nonsmokers. In cases in which employees have tried to use the common law to impose smoking restrictions, the courts also generally have sided with the employer, as occurred most recently in the 1985 decision in Paul Smith v. Western Elec. Co., 643 S.W.2d 10 (Mo. App. 1982), Smith v. AT&T, Cause No. 446,121 (Mo. Cir. Ct., April 23, 1985).

Indeed, with the exception of a few cases involving handicapped persons, the courts generally have held that employers -- including the federal government -- have no legal obligation to accommodate the demands of individual employees to ban or restrict workplace smoking.

Again, Mr. Chairman, I ask your permission to submit for the record a legal memorandum prepared by our legal counsel, Covington & Burling. It analyzes the pertinent court decisions dealing with workplace smoking.

Mr. Chairman, let me turn to the requirements of S. 1440. This bill would direct the Administrator of the General Services Administration to implement regulations designating smoking and nonsmoking areas "in any building under the jurisdiction and control of a department or agency of the United States." But some serious questions arise about how this will be accomplished.

How is this new federal smoking law to balance the various needs in departments as different as Defense and Health and Human Services?

Are the considerations for restrictions the same in our embassies abroad as in our V.A. hospitals?

Is the GSA Administrator going to dictate where foreign dignitaries may or may not smoke when visiting the State Department or the White House?

What makes the GSA Administrator the right person, if there is any "right" person, to resolve countervailing needs in such widely varying work environments?

If it is intended that this authority be delegated, what is the need for legislation?

Mr. Chairman, why not let each department and agency continue to handle the issue on its own without creating a new antismoking bureaucracy?

Although S. 1440 does not specifically authorize appropriations, the question of cost to the Government is important. For example, one seemingly innocent provision of S. 1440 would require the conspicuous display of signs in each portion of each building where smoking is allowed or prohibited. These signs, according to the bill are to be at least "18 inches wide and 6 inches high, with lettering at least 1.25 inches high." These fourteen words could portend the beginning of a bureaucrat's dream and a taxpayer's nightmare. Consider the Defense Department alone, with hundreds of thousands of buildings

in the United States, not counting those overseas. It is not difficult to imagine all of those buildings, starting with the Pentagon itself, requiring millions of signs at costs that can only be imagined.

Mr. Chairman, if the American people have delivered a message to their government in the past two presidential elections it is that Americans are disenchanted with the high cost and intrusiveness of government programs. They want big government off their back, out of their pocketbook, and away from their personal behavior.

In that context, S. 1440 is a step in the wrong direction. However well-intended, it stands for overspending and overregulation, at a time when the public wants less of each.

We urge you and this subcommittee to consider whether the personal relationships between workers who smoke and their fellow workers who do not should be regulated by Government fiat or by the rules of common sense, common courtesy, good will and mutual respect. That is all we ask.

Thank you for your time and your consideration.

STATEMENT OF SORELL L. SCHWARTZ
Before the
United States Senate Subcommittee on Civil Service,
Post Office and General Services

October 2, 1985

My name is Sorell L. Schwartz. I am Professor of Pharmacology at Georgetown University. I hold a Ph.D. in pharmacology and have specialized in toxicology throughout my career. My special emphasis has been on cause and effect analysis, risk analysis and the absorption, distribution and elimination of chemical substances. Faculty members at Georgetown often report studies or speak out on various issues and are encouraged to do so by the University in a responsible manner. But they do so without representing the University.

I am Chairman of a group of faculty members from a number of universities who, at the request and expense of the Tobacco Institute, exhaustively reviewed the pertinent scientific literature concerning exposure to environmental tobacco smoke, particularly in the workplace, and possible health effects. Individual members of our group have expertise in the disciplines of toxicology, epidemiology, industrial hygiene and pulmonary medicine. Specifically, we were asked independently to evaluate the primary data focusing on exposure to environmental tobacco smoke and chronic health disturbances and to consider the place that environmental tobacco smoke has in the entire problem of indoor air pollution.

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My purpose today is to present the essence of our group's opinion on environmental tobacco smoke, which is currently being prepared for publication in the scientific literature. There are a few preliminary points that deserve mention because they represent the conditions for my appearance.

(1) The opinions that I am presenting today are presented as part of our study for the Tobacco Institute, but they are our independently held opinions.

(2) As such, I am appearing here as spokesman for the group of scientists with whom I have been working. I am not a spokesman for the Tobacco Institute.

(3) I do not take issue with the position that active smoking per se is associated with significant health disturbances. Nothing that I say here today about environmental tobacco smoke exposure is intended to imply a similar opinion about active smoking. Indeed, I and my colleagues consider environmental tobacco smoke exposure and active smoking to be toxicologically distinct phenomena.

(4) I am not taking a position on behalf of our group for or against the bill before you. I am, however, commenting on the proposed finding in the bill that numerous studies have shown environmental tobacco smoke to be a health hazard.

(5) I recognize that there are people here -- laymen and scientists alike -- for whom elimination of

environmental tobacco smoke represents a personal agenda. My testimony does not address that position except to caution against the gerrymandering of scientific data to gain support for that agenda.

(6) Finally, and most important, our study was directed at the question of demonstrable chronic health effects of environmental tobacco smoke and not to the question of whether tobacco smoke is or can be a nuisance or bothersome to some people in some circumstances.

In undertaking our investigation, we were aware that there is controversy in the scientific literature concerning whether environmental tobacco smoke can have chronic health effects. We also were aware that three international workshops on the subject had found no persuasive evidence of chronic health effects or had judged the available data to be inconclusive. We were aware, in addition, of extensive media reports claiming that environmental tobacco smoke had been found to affect people's health adversely.

Perhaps most importantly, we knew as we undertook our study that in order to arrive at an opinion we had to evaluate the available data ourselves. Anyone who has not fully evaluated all of the data and applied recognized evaluation techniques is not in a position to reach an independent conclusion; that individual can only report on other people's conclusions.

When we looked at studies in the literature addressing possible health effects of environmental tobacco smoke, the most significant problem we found was that they generally lacked appropriately validated exposure estimates or dosage measurements. This deficiency has been noted by others and is, in fact, the major point of consensus emerging from independent reviews both by individual scientists and groups of scientists. Parts of this consensus are the three workshops on the subject, including those organized by the National Institutes of Health and the World Health Organization. In the absence of adequate dosage information, it is difficult to reach scientifically reliable conclusions regarding cause and effect relationships.

It is also generally recognized that environmental tobacco smoke is not simply a diluted form of mainstream or sidestream tobacco smoke. It is a component of the complex mixture of chemicals known as indoor air pollution and is physically, chemically and toxicologically distinct from mainstream and sidestream tobacco smoke. Measuring environmental tobacco smoke is part of the mosaic of measuring indoor air components. The accurate and precise measurement of indoor air components necessary for use in exposure assessment is difficult, tedious and expensive. Such measurements are affected by temperature, barometric pressure, relative humidity, air leakage through cracks around windows, doors and other building components, use of combustion

devices, human activity levels, building design, operation and maintenance procedures and ambient air pollution levels. The idea that exposure to environmental tobacco smoke can be estimated by measuring particles in the air and equating that to numbers of cigarettes is one that cannot be supported within the conventional rubric of environmental monitoring.

In addition to the problem associated with documenting exposure, our group was impressed by serious flaws in design and methodology associated with all of the studies of the health effects of environmental tobacco smoke -- those purporting to show an effect and those showing no effect. Dr. Philip Witorsch, Clinical Professor of Medicine at the George Washington University Medical Center, plans to submit a statement to the Subcommittee discussing the pertinent studies focusing on respiratory and cardiovascular function. I will consider another area -- the claim that exposure to environmental tobacco smoke is associated with an increase in lung cancer among nonsmokers.

To say that it is easy to underestimate the difficulty of doing acceptable epidemiologic research, and to overestimate the meaning of a study that purports to compare a control population with an exposed population, is almost an article of faith today. We have carefully reviewed, in detail, all of the studies relating to environmental tobacco smoke and lung cancer. In addition, we have submitted the studies to epidemiologists outside of our group. Those

individuals did not know the purpose of the review they were being asked to undertake or the identity of the sponsor. Without exception, every epidemiologist who has reviewed the pertinent studies has agreed with the conclusion of our group that the studies to date do not support a causal inference relating exposure to environmental tobacco smoke to an increased incidence of lung cancer. Some of the epidemiological studies that have been represented as establishing an environmental tobacco smoke/lung cancer relationship are not usable to any degree because they were poorly described, poorly done, did not use control groups, did not verify the nature and extent of exposure, did not verify the histological nature of the disease or involved other inadequate documentation. The fact that a group -- in this case, a rather small group -- of poorly designed and conducted studies may point to a similar conclusion does not enhance their validity. It is an uncompromising rule of scientific endeavor that no type of statistical analysis can salvage data from poorly designed and improperly conducted studies.

The two largest and most quoted studies on the relationship between environmental tobacco smoke and lung cancer are one from Japan by Hirayama and an American Cancer Society study by Garfinkel on American women. Both involved studies of lung cancer incidence in the nonsmoking wives of smoker husbands. Hirayama claimed to find an increase in lung cancer incidence. Garfinkel reported no statistically

significant increase. There is a substantial amount of published and unpublished opinion that the Hirayama study suffers from a number of serious methodological and inferential problems -- including patient selectivity, definitions of smoking exposure, occupational considerations and analytical methods used. The Garfinkel study also has been criticized for methodological problems. Given the current state of the scientific literature, one can assert a causal relationship between exposure to environmental tobacco smoke and lung cancer only if one is willing to ignore the available data and mainstream epidemiologic opinion.

That is not to say that such a causal inference has not been made and then promoted. One highly publicized paper, written by James Repace and Alfred Lowrey, claimed that exposure to environmental tobacco smoke is responsible for between 500 and 5000 lung cancer deaths per year in the United States. The Repace/Lowrey computations involved a notable misunderstanding of the power and usability of epidemiological data and risk analysis techniques. Again, that is not an isolated opinion. It is the relatively consistent opinion of those involved in epidemiological and risk analysis research who have reviewed the Repace/Lowrey paper and the studies on which Repace and Lowrey relied upon in making exposure assumptions and a causal inference.

At the outset, I stated that we considered environmental tobacco smoke a part of indoor air pollution. I should

emphasize that we consider indoor air pollution, in general, to be a serious scientific and public policy issue. However, it is clear that environmental tobacco smoke is only one of a number of factors that influence indoor air quality. Those factors include outdoor air quality, building structure, building materials, consumer products, appliances, cleaning substances, combustion devices, ventilation rate and occupant activity. In the past ten years, health complaints related to indoor air pollution have increased dramatically. A number of public and private groups have recognized the complexity of the indoor air pollution problem. In fact, there is some evidence that attempts to use environmental tobacco smoke as a surrogate for indoor air pollution has been counterproductive.

For example, requiring lower ventilation rates in nonsmoking areas has led to proposed ventilation rates for those areas that are clearly inimical to health with respect to other indoor air pollutants including microbial agents. The problem of indoor air pollution in the long run is a problem of adequate ventilation irrespective of whether or not smoking is permitted in an area. There are studies that show that smoking restrictions have not led to less indoor air related health complaints. One of those is a survey by NIOSH concerning indoor air quality that indicates that about 50 percent of health complaints were related to high carbon dioxide levels while only two percent were related to

smoking. We suggest that if there is a concern about the quality of indoor air in government buildings, the GSA should be directed to study the ventilation rates in those buildings and to evaluate the adequacy of that ventilation for prevention of what has been termed the "sick building syndrome." That is much more likely to be beneficial than directing efforts solely at environmental tobacco smoke.

Mr. Chairman, I appreciate your having permitted me to appear here today and I would be pleased to respond to any questions you or other members of the Subcommittee may have.

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Marital Status: Married, two children

Education:
University of Maryland, Baltimore, Maryland, 1959, B.S. Pharmacy
Medical College of Virginia, Richmond, Virginia, 1963, Ph.D. Pharmacology

Primary Positions:

Professor, 1976 - present; Associate Professor, 1968 - 1976; Department of Pharmacology, Georgetown University Schools of Medicine and Dentistry

Scientific Director, Center for Environmental Health and Human Toxicology, 1982 - Present

Associate Director, Center for Interdisciplinary Studies of Immunology, Georgetown University Medical Center, 1975 - 1980

Head, Pharmacology Division, U.S. Naval Medical Research Institute, National Naval Medical Center, Bethesda, Maryland, 1966 - 1968

U.S. Naval Officer, Active Duty: Assignment as Pharmacologist, Experimental Medicine Division, U.S. Naval Medical Research Institute, National Naval Medical Center, Bethesda, Maryland, 1963 - 1966

Special Appointments and Committees/Georgetown University:

Member, Research Committee--Subcommittee on Scientific Merit (Institutional Review Board), Medical Center, 1969 - Present

Member, Committee on Faculty, School of Medicine, 1977 - Present

Interviewer, Committee on Admissions, School of Medicine, 1969 - Present

Member, Medical/Dental Sciences Area Council Graduate School, 1975 - 1983

Member, Fellowship Committee, Graduate School, 1979 - 1981

Chairman, Departmental Graduate Committee, Department of Pharmacology,
1969 - 1981

Assistant Director, Georgetown University Pulmonary Program Project,
School of Medicine, 1974 - 1979

Member, Committee on Space Allocation, Schools of Medicine and Dentistry,
1977 - 1978

Member, Subcommittee on Preclinical Sciences Curriculum, School of
Medicine, 1976 - 1977

Member, Library Committee, Medical Center, 1974 - 1976

Special Appointments and Committees/Non-University:

Secretary-Treasurer of the Board of Directors, The Academy of Toxicologi-
cal Sciences, 1981 - Present

Council Member, American College of Toxicology, 1984 - Present

Member, Life Sciences Advisory Committee, Chemical Systems Laboratory,
U.S. Army, 1982 - Present

Member, Prescription Drug Formulary Committee, District of Columbia
Department of Human Resources, 1977 - Present

Member, Committee on Public Affairs, American Society for Pharmacology and
Experimental Therapeutics (ASPET), 1975 - 1984

Member, Committee on Public Affairs, Federation of American Societies for
Experimental Biology (FASEB), 1978 - 1981

Chairman, FASEB Task Force on Peer Review, 1978 - 1981

Member, EPA Water Quality Criteria Document Committees on Dichloropropane/
Dichloropropene; Ethylbenzene; Monochlorobenzene; Trichlorobenzene;
Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene

Chairman, 1977 - 1978; Member, 1977 - 1980 Subcommittee on Public Infor-
mation, ASPET

Chairman, 1977 - 1978; Member, 1975 - 1978, Committee on Public Informa-
tion, FASEB

Visiting Professor, University of District of Columbia, 1973 - 1983

Member, Ad Hoc Committee on Deferrioxamine, National Heart, Lung and Blood
Institute, 1975, 1981

Member, Editorial Board, Toxicology and Applied Pharmacology, 1972 - 1978

Member, Ad Hoc Committee on Irradiated Foods Toxicology Protocols,
National Research Council--National Academy of Sciences, 1975

Member, Program Committee, Society of Toxicology, 1972 - 1973

Member, Pharmacology Study Section, National Institutes of Health, 1966 -
1968

Member, Naval Investigational Review Board, 1964 - 1970

Navy Liaison to the Food and Drug Administration, 1964 - 1968

Advisory Appointments/Public Sector:

Food and Drug Administration

Environmental Protection Agency

National Institute on Drug Abuse

U.S. Postal Service

Select Committee on Aging, U.S. House of Representatives

Federal Trade Commission

Select Committee on General Regarded as Safe Substances, FDA/FASEB

National Library of Medicine

Occupational Safety and Health Administration

Department of Defense

Department of Justice

Federal Aviation Administration

Current Professional Activities:

Research - Pharmacokinetics and Toxic Mechanisms

1. Correlation of physical properties of chemical and membranes with pharmacokinetic and toxicologic properties of chemicals
2. Development of pharmacokinetic models for scale-up of animal toxicologic data to humans
3. Clinical pharmacokinetics of cancer chemotherapeutic agents
4. Pharmacokinetics in pregnancy

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5. Incorporation of pharmacokinetic parameters in risk assessment models

Research - Population Toxicology

1. Development of methods for cause and effect analysis of claimed injury from toxic substances
2. Evaluation of individual members of exposed populations and application and assignment of causation criteria

Advisory

1. Evaluation of toxicologic hazard of chemical waste dumps and toxicologic matters to be considered in various remedies
2. Evaluation of toxicologic hazards of drugs and commercial products--e.g., formaldehyde-containing materials; food additives
3. Evaluation of toxicologic hazards of agriculture chemicals--e.g., ethylene dibromide
4. Development of strategies for response to specific regulatory notices
5. Provide information and advice in connection with civil suits relating to claims of personal injury from chemicals; organize and administer physician-scientist patient evaluation teams
6. Food and drug safety under FDA regulatory requirements.

Grants Awarded:

Office of Naval Research
American Medical Association, Education and Research Foundation
National Institute of Environmental Health Sciences
National Heart Lung Institute

Elected Memberships:

American Society for Pharmacology and Experimental Therapeutics
Society of Toxicology
American College of Toxicology
American Academy of Clinical Toxicology
Society for Risk Analysis

PUBLICATIONS

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16. Cowden, M.W., B.J. Kinzig and S.L. Schwartz: Contact angle measurements on treated mouse peritoneal macrophage monolayers using different spreading liquids. 51st Colloid and Surface Science Symposium, 98, 1977.
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EPA Criteria Documents:

1. Ambient Water Quality Criteria, Dichloropropane/Dichloropropene
2. Ambient Water Quality Criteria, Chlorobenzenes

STATEMENT OF PHILIP WITORSCH
Before the
United States Senate Subcommittee on Civil Service,
Post Office and General Services

October 2, 1985

My name is Philip Witorsch and I am a physician specializing in Pulmonary Medicine. I am presently Clinical Professor of Medicine in the Division of Pulmonary Diseases and Allergy of the George Washington University Medical Center in Washington, D.C. A copy of my curriculum vitae is attached to this statement.

I am one of a group of faculty members from a number of universities who, at the request and expense of The Tobacco Institute, examined the question of health disturbances and exposure to environmental tobacco smoke. Specifically, we were asked to independently evaluate the primary data which relates exposure to environmental tobacco smoke and chronic health disturbances, as well as the place that environmental tobacco smoke has in the overall problem of indoor air pollution. To accomplish this, we reviewed and objectively evaluated all of the available relevant data.

I would like to limit my remarks to the issues of respiratory and cardiovascular health effects, and what I will be presenting represents the consensus of our group's opinions. I would like to emphasize that, while these opinions were reached as a result of our study for The Tobacco Institute, they are our independently held opinions. Furthermore,

nothing that I say about environmental tobacco smoke exposure should be taken to imply a similar opinion about active smoking. The issue of possible health effects of environmental tobacco smoke is toxicologically and clinically different from that of health effects of direct smoking, and studies relevant to the latter situation are not necessarily relevant to the former circumstance.

I would also like to emphasize that this statement is not meant to represent my own or the group's position on the entire bill before you. This statement addresses only the first finding in Section 2, i.e., "numerous studies have shown second-hand smoke to be a significant health hazard," which finding we believe to be scientifically unsupportable.

As Dr. Schwartz has pointed out, when we reviewed the relevant scientific literature we encountered a number of difficulties in interpreting the data for purposes of causation analysis. The problems included the absence of adequately verified exposure estimates, as well as serious flaws in design or methodology, making it extremely difficult to arrive at scientifically supportable conclusions regarding causation. These problems have also been noted by many other independent groups, including three scientific workshops (Lehnert & Wynder, 1984; Public Health Service, 1983; Rylander, 1984).

It has been suggested that the data in the literature demonstrates that environmental tobacco smoke causes

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chronic obstructive pulmonary disease in adults, is associated with or exacerbates preexisting cardiovascular disease, and initiates asthma attacks or allergic reactions. One can reach such conclusions only by a selective interpretation of the data, ignoring fatal flaws in studies and ignoring that data which contradicts the notion of causation. That is, it requires a fairly serious breach in the principles of critical scientific analysis.

For example, the most widely cited paper presumed to demonstrate decreased pulmonary function in the lungs of nonsmokers said to be chronically exposed to environmental tobacco smoke (White & Froeb, 1980) has been widely criticized by pulmonary physicians and physiologists for containing a number of potentially invalidating flaws, including a statistically biased population sample, failure to address a number of potentially significant variables, less than optimal instrumentation for the type of study, and less than satisfactory techniques and data analysis (Lebowitz, 1984). Furthermore, the differences noted between the alleged exposed and nonexposed groups were within the normal range. Finally, the two physiologic parameters which were different and said to indicate the presence of small airways dysfunction are, in fact, far from generally accepted as reflecting small airways function, or for that matter having any clinical or physiological significance, while other parameters known to be indicators of pulmonary dysfunction were unchanged.

In fact, a 1983 National Institutes of Health workshop (Public Health Service, 1983), which reviewed the data from a number of studies, including the White and Froeb study, concluded as follows:

"A review of the data from studies which address the effect of passive smoking on the respiratory system suggests that the effect varies from negligible to quite small."

Similar conclusions were reached by international workshops held at the University of Geneva in 1983 (Rylander, 1984) and in Vienna, Austria in 1984 (Lehnert & Wynder, 1984).

Similar problems and even more serious ones are found in the work purporting to show effects of environmental tobacco smoke on individuals with coronary heart disease and asthma. In all cases there is no confirmation of, and in some cases data which contradicts, the conclusions that environmental tobacco smoke causes or exacerbates these disorders (Helsing, et al., 1982; Jones, et al., 1983; Kentner, et al., 1984; Lebowitz, 1984; Schievelbein & Richter, 1984).

A study that has been widely cited in support of the contention that environmental tobacco smoke may adversely affect individuals with coronary (ischemic) heart disease is a paper by Aronow (Aronow, 1978). Aronow evaluated the effect of so-called passive smoking on exercise-induced coronary chest pain (angina) in a group of ten men with severe coronary artery disease. He concluded that exposure

to environmental tobacco smoke decreased the duration of exercise leading to angina and suggested that this was the result of increased blood carbon monoxide levels (carboxy-hemoglobin) causing decreased cardiac oxygen delivery, coupled with nicotine-induced increased cardiac oxygen demand.

Aronow's study has a number of problems that make interpretation of the data difficult. Ambient carbon monoxide levels were not measured and the theoretical increase in ambient carbon monoxide under the conditions of the study would have been insufficient to produce the increase in blood levels that were reported to occur. Furthermore, the relationship between blood levels and impairment in exercise performance was highly inconsistent with previous data from the same investigator. Levels of nicotine or nicotine metabolites were not determined. A number of other factors that might have influenced the results including carbon dioxide build-up and psychogenic and emotional factors do not appear to have been appropriately addressed. The end-point used, subjective chest pain, is not as reliable as the usual end-point of electrocardiographic changes (S-T segment depression). There were inadequate controls and the statistical methodology may have been flawed and inappropriate. Thus, Aronow's report cannot validly be said to indicate that environmental tobacco smoke is deleterious to individuals with coronary heart disease.

A recent study which addressed the incidence of fatal coronary heart disease among nonsmoking wives of smoking husbands has been interpreted as providing data compatible with the hypothesis that exposure to environmental tobacco smoke can result in an excess risk of fatal coronary heart disease (Garland, et al., 1985). Unfortunately, the authors did not adequately verify exposure and neither adequately determined dose nor demonstrated a dose-response relationship. Furthermore, the subjects were self-selected, thus introducing a potential bias, other possibly relevant factors such as life style were not adequately addressed and the validity of the statistical methodology is suspect, including the probably invalid combination of two heterogeneous groups of subjects into a single group. Careful review of the data also reveals unexplained internal inconsistencies and contradictions.

With respect to possible adverse cardiovascular effects of environmental tobacco smoke (ETS), it has been suggested that such effects relate, at least in part, to carbon monoxide (CO). It is worth noting in this regard that the consensus of the 1983 University of Geneva workshop was that "CO from ETS is not important from a health point of view" (Rylander, 1984), an opinion shared by other responsible scientists who have addressed the issue (Schievelbein & Richter, 1984).

With regard to asthma, one study (Dahms, et al., 1981) reported that ten asthmatics exposed to tobacco smoke in an environmental chamber developed a decrease in respiratory flow rates. However, as the authors themselves acknowledge, emotional and psychogenic factors could not be excluded in this unblinded study. This study also suffers from the use of self-selected subjects and the absence of appropriate environmental controls. Additionally, even where physiologic changes were detectable no clinical symptoms of asthma occurred. Most other investigators have not been able to demonstrate that environmental tobacco smoke exacerbates asthma (Ing & Breslin, 1983; Pimm, et al., 1977; Shephard, et al., 1979).

It is well established that asthmatics may react with increased airway resistance and symptoms to a wide variety of specific and nonspecific stimuli. Emotional and psychogenic stimuli are capable of increasing airway resistance in subjects with asthma, even at times to the point of overriding contrary pharmacologic agents. Other factors include allergens, infectious agents, temperature changes, altered relative humidity and various particulate and non-particulate irritants.

It is also worth noting with regard to environmental tobacco smoke and asthma that the available data does not support the existence of an allergy to tobacco smoke or its constituents. Pertinent studies in this regard have been

reported by groups at the Mayo Clinic (McDougall & Gleich, 1976) and Tulane (Lehrer, et al., 1980), who were unable to document an allergic response to tobacco smoke even among subjects who claimed to be smoke sensitive.

Another area of putative adverse health effects of environmental tobacco smoke where particular concern has been expressed is in the patient with preexisting chronic obstructive pulmonary disease (chronic bronchitis and emphysema). There are, however, only unconfirmed anecdotal reports and no reasonable scientific studies that appropriately address this issue in such individuals. Anecdotal reports may appropriately serve as a starting point for scientific research but they are not, of and by themselves, a valid basis for a cause and effect conclusion.

A careful review of the complete available scientific literature, therefore, fails to support the conclusion that "second-hand smoke is a significant health hazard." Rather, it leads to the conclusion that environmental tobacco smoke is an inappropriate target on which to base management approaches for controlling indoor air related health disturbances. For Congress to reach any other conclusion would be scientifically unfounded and misleading.

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White, J.R. & Froeb, H.R.: Small Airways Dysfunction in Non-smokers Chronically Exposed to Tobacco Smoke. New Eng. J. Med. 302:720, 1980.

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1. Clinical Professor of Medicine, The George Washington University School of Medicine and Health Sciences
2. Adjunct Professor of Pharmacology, Georgetown University Schools of Medicine and Dentistry
3. Medical Director Center for Environmental Health and Human Toxicology
4. Attending Physician (Department of Medicine, Division of Pulmonary Diseases and Allergy), Associate Medical Director, Respiratory Therapy Services, The George Washington University Hospital
5. Consultant in Pulmonary Diseases, U.S. Department of State
6. Consultant in Pulmonary Diseases, Veterans Administration Hospital, Washington, D.C.
7. Consultant, U.S. Department of Justice
8. Consultant, U.S. Environmental Protection Agency
9. Attending Physician, (Internal Medicine and Pulmonary Diseases), Georgetown University Hospital
10. Attending Physician, (Georgetown University Medical and Pulmonary Services), District of Columbia General Hospital
11. Senior Attending Physician, (Department of Medicine and Section of Pulmonary & Critical Care Medicine), Washington Hospital Center
12. Attending Physician, (Internal Medicine and Pulmonary Diseases), Capitol Hill Hospital
13. Consultant, U.S. Department of Labor

BOARD CERTIFICATION:

1. Diplomate in Internal Medicine, American Board of Internal Medicine
2. Diplomate in Pulmonary Diseases, Subspecialty Board in Pulmonary Diseases, American Board of Internal Medicine
3. Recertified in Internal Medicine, American Board of Internal Medicine

LICENSURE:

1. Diplomate, National Board of Medical Examiners
2. Licensed in District of Columbia, Maryland, and Virginia

PROFESSIONAL SOCIETIES:

1. Fellow, American College of Physicians
2. Fellow, American College of Chest Physicians
3. Fellow, American Geriatrics Society
4. American Society of Internal Medicine
5. Society of Critical Care Medicine
6. Affiliate, The Royal Society of Medicine
7. American Federation for Clinical Research
8. American Thoracic Society (Member, Scientific Assembly on Clinical Problems)
9. District of Columbia Thoracic Society (President, 1975-76)
10. District of Columbia Lung Association (Chairman, Respiratory Disease Advisory Committee 1972-1976; Member, Board of Directors, 1974-76)
11. American Association for the Advancement of Science
12. New York Academy of Sciences
13. American Association for Respiratory Therapy (also MD-DC-VA Society and D.C. Chapter; formerly Medical Advisor to D.C. Chapter and Member, Board of Medical Advisors, MD-DC-VA Society)
14. National Association of Medical Directors of Respiratory Care
15. American Heart Association
16. Washington Heart Association

17. American Medical Association
18. Southern Medical Association
19. District of Columbia Society of Internal Medicine
20. Eastern Section, American Thoracic Society
21. Section on Occupational and Environmental Health, American College of Chest Physicians
22. Member, Council on Critical Care, American College of Chest Physicians
23. Member, Scientific Assembly on Environmental and Occupational Health, American Thoracic Society
24. Member (Full), American College of Toxicology

PRIOR PROFESSIONAL APPOINTMENTS:

1. Intern in Internal Medicine, Grace-New Haven (Yale-New Haven) Hospital, 1962-63
2. Assistant Resident in Internal Medicine, Grace-New Haven (Yale-New Haven) Hospital, 1963-64
3. Clinical Associate, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 1964-66
4. Clinical Investigator, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 1966-67
5. Resident in Internal Medicine, Veterans Administration Hospital Washington, D.C., July 1967-December 1967
6. Chief Resident in Internal Medicine, Veterans Administration Hospital, Washington, D.C., January 1968-June 1968
7. Fellow in Pulmonary Diseases, Veterans Administration Hospital, Washington, D.C., 1968-69
8. Clinical Instructor in Medicine, The George Washington University School of Medicine, 1967-69
9. Assistant Professor of Medicine, The George Washington University School of Medicine, 1969-73
10. Associate Professor of Medicine, The George Washington University School of Medicine, 1973-79
11. Professor of Medicine, The George Washington University School of Medicine, 1979-83
12. Chairman, Section of Pulmonary and Critical Care Medicine Director, Medical Intensive Care Unit, Medical Director, Respiratory Therapy Director, Pulmonary Function Laboratory, Washington Hospital Center, 1969-1982

13. Consultant in Pulmonary Diseases, Clinical Center National Institutes of Health
14. Consultant in Pulmonary Diseases, Malcolm Grow Air Force Hospital, Andrews Air Force Base
15. Medical Director, Pulmonary Medicine, Capitol Hill Hospital, 1981-83

MILITARY SERVICE:

Surgeon, U.S. Public Health Service, 1964-67

HONORS AND AWARDS:

1. Phi Beta Kappa
2. Alpha Omega Alpha
3. Alpha Omega Alpha Prize for Highest Class Standing, New York University School of Medicine, 1962
4. Mead Johnson - American College of Physicians Residence Scholarship, 1967-68
5. AMA Physicians's Recognition Awards, 1969, 1972, 1975, 1978, 1981

EDUCATION:

1. A.B. (magna cum laude), University College of Arts and Science, New York University, 1958
2. M.D., New York University School of Medicine, 1962

MISCELLANEOUS:

1. Editorial Consultant, Annals of Internal Medicine
2. Member, Communicable Disease Committee, Medical Society of D.C. (1971-73)
3. Member, Executive Committee, D.C. Thoracic Society (1972-76)
4. Chairman, Program Committee, D.C. Thoracic Society (1974-75)
5. Respiratory Disease Advisory Committee, D.C. Lung Association (Member, 1971-72, Chairman, 1972-76)
6. Co-Director, Pulmonary Fellowship Training Program, The George Washington University Medical Center
7. Respiratory Therapy Advisory Committee, Washington Technical Institute (1973-79)
8. Georgetown University Pulmonary Program Project Advisory Committee

9. Member, Continuing Education Committee, Medical Society of D.C. (1974-76)
10. Member, House Staff Evaluation Committee, Department of Medicine, Washington Hospital Center (1973-1982)
11. Member, Department of Medicine Teaching and Education Committee, Washington Hospital Center (1973-1982)
12. Member, Nurse Staffing Subcommittee, Washington Hospital Center (1974)
13. Member, ICU Committee, Washington Hospital Center
14. Chairman, Program Committee, Potomac Chapter, American College of Chest Physicians (1974-75)
15. Member, Board of Directors, D.C. Lung Association (1974-76)
16. Pulmonary Subject Committee of Second Year Curriculum Subcommittee of Educational Planning Committee, The George Washington University School of Medicine
17. 1975 Program Committee, Eastern Section, American Thoracic Society
18. Scientific Session Chairperson, 1974 Annual Meeting, Eastern Section, American Thoracic Society
19. Member, Medical Care Evaluation/Continuing Medical Education Committee, National Capital Medical Foundation (Chairman, Continuing Medical Education Subcommittee), 1975-76
20. Advisory Committee, Health Technology, Prince George's Community College (1980-1983)
21. Member, Executive Council Committee, Department of Medicine, The George Washington University Medical Center, 1976-77
22. Co-Director and Program Chairman, Washington Hospital Center/ American College of Physicians Postgraduate Course: Selected Topics in Internal Medicine, 1977
23. Scientific Session, Chairperson, 1977 Annual Meeting, Society of Air Force Physicians - American College of Physicians Annual Meeting
24. Member, Emergency Medical Services Task Force, Washington Hospital Center
25. Member, Educational Planning Committee, The George Washington University School of Medicine, 1978
26. Member, Critical Care Committee, Washington Hospital Center
27. Member, Nutrition Committee, Washington Hospital Center
28. Certified A-reader, National Institute of Occupational Safety and Health

PUBLICATIONS:

1. Witorsch, P., and Gorden, P.: Hemophilus Aphrophilus Endocarditis. Ann. Int. Med., 60:957, 1964.
2. Witorsch, P., Williams, T.W., Jr., Ommaya, A.K., and Utz, J.P.: Intraventricular Administration of Amphotericin B. J.A.M.A., 194: 699, 1965.
3. Witorsch, P., and Utz, J.P.: X-5079C: Further Studies in 38 Patients. Transac. 24th Res. Conf. in Pulm. Dis., p. 51, 1965.
4. Witorsch, P., Utz, J.P., Williams, T.W., Jr., Emmons, C.W., and Piggott, W.: Chemo-therapeutic Studies of Hamycin in Systemic Mycoses of Man. Transac. 25th Res. Conf. in Pulm. Dis., p. 50, 1966.
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6. Utz, J.P. and Witorsch, P.: North American Blastomycosis. Am. Rev. Resp. Dis., 94:495, 1966.
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8. Williams, T.W., Jr., Witorsch, P., Highman, B., Emmons, C.W., and Utz, J.P.: Hamycin Toxicity in the Dog. Antimicrob. Agents and Chemotherapy, 1965:700, 1966.
9. Utz, J.P., Witorsch, P., Williams, T.W., Jr., Emmons, C.W., Shadomy, H.J., and Piggott, W.: Hamycin: Chemotherapeutic Studies in Systemic Mycoses of Man. Am. Rev. Resp. Dis., 95:506, 1967.
10. Witorsch, P. and Utz, J.P.: North American Blastomycosis: A Study of 40 Patients. Medicine, 47:169, 1968.
11. Jenkins, R.B., Witorsch, P., and Smyth, N.P.D.: Aspects of Treatment of Crisis in Myasthenia Gravis. South. Med. J., 63: 1127, 1970.
12. Witorsch, P.: Book Review of A Glossary of Mycology (W.H. Snell and E.A. Dick). Ann. Int. Med., 74:658, 1971.
13. Leftwich, E.I. and Witorsch, P.: Continuous Positive Pressure Ventilation in Refractory Hypoxemia. Clin. Res., 20:87, 1972.
14. Jacobs, H.B., Smyth, N.P.D., and Witorsch, P.: Short-Term Controlled Ventilation Using A Percutaneous Transtracheal Catheter in Apneic Patients. Chest, 62:365, 1972.
15. Witorsch, P.: Chronic Obstructive Lung Disease. Am. Fam. Physic., 7:87, 1973.

16. Leftwich, E.I., Witorsch, R.J., and Witorsch, P.: A Critical Evaluation of Positive End-Expiratory Pressure in Refractory Hypoxemia. Ann. Int. Med., 79:187, 1973.
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21. Perlman, S.G., Damergis, J.A., Witorsch, P., Cooney, F.D., Gunther, S.F., and Barth, W.F.: Vertebral Sarcoidosis with Paravertebral Ossification. Arth. & Rheum., 21:271, 1978.
22. Damergis, J.A., Leftwich, E.I., Curtin, J.A., and Witorsch, P.: Tuberculoma of the Brain, J.A.M.A., 239:413, 1978.
23. Witorsch, P.: Book Review of Medical Management of the Critically Ill (G.C. Hanson & P.L. Wright). Ann. Int. Med., 1979.
24. Witorsch, P.: Book Review of Pulmonary Emergencies (S.A. Sahn). Ann. Int. Med. 98:571, 1983.
25. Tuazon, C.U., Simon, G.L., Delaney, M., Witorsch, P. and Varma, V.: Diagnosis and Treatment of *Pneumocystis Carinii* Pneumonia (PCP) in Patients with Acquired Immune Deficiency Syndrome (AIDS). Clin. Res. 32:385A, 1984.
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27. Witorsch, P. and Schwartz, S.L.: Acute Inhalation Lung Disease, in Pulmonary Emergencies, S.V. Spagnolo and A. Medinger, editors, Plenum Publishing Co., 1985, in press.
28. Witorsch, P.: Pulmonary Edema, in Pulmonary Emergencies, S.V. Spagnolo and A. Medinger, editors, Plenum Publishing Co., 1985, in press.

PRESENTATIONS:

1. Witorsch, P. and Utz, J.P.: X-5079C: Further Studies in 38 Patients. 24th Res. Conf. in Pulm. Dis. of the Veterans Administration - Armed Forces, 1965.
2. Witorsch, P., et al.: Chemotherapeutic Studies of Hamycin in Systemic Mycoses of Man. 25th Res. Conf. in Pulm. Dis. of the Veterans Administration - Armed Forces, 1966.
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7. Steinberg, L., Levin, R., and Witorsch, P.: Acute Supraglottitis in Adults. Tri-State Meeting (MD-DC-DEL), American College of Physicians, 1971.
8. Leftwich, E.I. and Witorsch, P.: Continuous Positive Pressure Ventilation in Refractory Hypoxemia. Annual Meeting, Southern Society for Clinical Investigation, 1972.
9. Jacobs, H.B., Smyth, N.P.D., and Witorsch, P.: Short-Term Controlled Ventilation Using A Percutaneous Transtracheal Catheter in Apneic Patients. Annual Meeting, American College of Chest Physicians, 1972.
10. Tuazon, C.U., Simon, G.L., Delaney, M., Witorsch, P. and Varma, V.: Diagnosis and Treatment of Pneumocystis Carinii Pneumonia (PCP) in Patients with Acquired Immune Deficiency Syndrome (AIDS). Annual Meeting, American Federation for Clinical Research (AFCR), 1984.

PERSONAL DATA:

1. Date and Place of Birth:
July 11, 1937
New York, New York
2. Married, two children

Senator STEVENS. Our next witness is Mr. J. Thomas Burch, Jr., chairman of the National Vietnam Veterans Coalition

TESTIMONY OF J. THOMAS BURCH, JR., CHAIRMAN, NATIONAL VIETNAM VETERANS COALITION

Mr. BURCH. Good morning, Mr. Chairman. I am Tom Burch. I am the chairman of the National Vietnam Veterans Coalition. Prior to coming here today, I prepared a three-page official statement of the position of the Vietnam veterans of this country in opposition to Senate bill 1440. Rather than read that statement, I would first request that you incorporate that in reference as my official comments.

Senator STEVENS. I will do that. I have read it, and I understand it. There are some interesting statistics in there I want to talk to you about. Go ahead.

Mr. BURCH. If I may elucidate on maybe two primary points, first in regard to what the Vietnam Veterans Coalition is and why we have frankly been interested in an issue such as this. Vietnam veterans, after coming back from the war, really did not go into traditional organizations because they did not believe they were picking up our issues, and a number of fragmented groups grew up around the country. We recognized what needed to be heard in the Halls of Congress or in the White House. There was a need to have a united front, frankly, to have one person who could articulate the position on behalf of the Vietnam veterans.

So 2 years ago, some of the groups determined they would come together on a group of issues and I would become the official spokesman of the Vietnam veterans movement. The matter has grown, and now there are 26 different Vietnam veterans organizations that are part of the coalition, of which I am the national spokesman. The only major group not included is Vietnam Veterans of America, which is not a part of the coalition, but it does include the United Vietnam Veterans Organization of Philadelphia, Vietnam Veterans of the War, United Veterans of America, Brotherhood of Vietnam Veterans, Intertribal Association—I could go on—all over the country, nationwide.

The combined membership of those 26 groups is roughly 200,000.

Now, in addition, there is a 27th group in the coalition, and that is the Veterans of Foreign Wars of the United States. I do not specifically speak for them, but on issues such as this, I can associate with them when they have the position of the coalition. In this instance, they do. They agree with us.

So since there are 600,000 Vietnam veterans in the Veterans of the Foreign Wars of the United States, I feel here today that I am articulating the position of at least about 800,000 organizational Vietnam veterans.

The concern that we have is probably a little different from some of the different groups on this issue. To start off with, the Vietnam veterans probably are definitely not as concerned about the health hazards that may be involved, and there are a couple of reasons for this. For one thing, there are about 600,000 disabled Vietnam veterans of one type or another of the 2.8 million that actually served in Vietnam.

A lot of these men have pain and, frankly, are concerned about the shortness of their lifespan already from the disabilities they have had from a war injury.

Second, in fact, there is a variety of concerns. In general, men are very concerned about the effects of agent orange on them. Frankly, their concern is so great that this is going to shorten their lifespan that it will not arouse a number of concerns they have about cigarette smoking or smoking in general, whether it is hazardous or not.

Getting down to the main crux of what our concern is, there was a twofold purpose of the men coming together for the united front. We were concerned about a positive image. We were concerned about the type of people getting in front of the TV cameras and speaking on behalf of Vietnam veterans. We want to put forth a positive image of our service and what we have done.

Also, we had a hand in helping the men take advantage of going to the Veterans' Administration system, the hospitals and particularly the operating centers. When I met with Harry Walters a couple of years ago, he mentioned one of the things I could do would be to try to get the men to come in and seek guidance and help; if they could just diagnose their problems earlier, they could do a lot more for them. There was a tremendous distrust among the men about the way they felt about agent orange and the facilities in general. We worked very hard to get the men to come into the counseling centers.

Our concern now is if we have this type of legislation that would restrict their smoking when they come into the facilities, because in large part, they are smokers. I personally, incidentally, Mr. Chairman, am a smoker. I am a pipe smoker, and I know that the men smoke and they like to do it. They don't use other noxious substances that can hurt them, but they like to smoke. We are very concerned, in outreach centers, when we have restrictions that we can't smoke here and can't smoke there.

Senator STEVENS. It is my understanding that no-smoking areas are already in existence in those facilities.

Mr. BURCH. Mr. Chairman, there are such areas, but it is more like a local situation. One of the things I am thinking about right now, since I have been down to Fayetteville, NC, is they have a much smaller facility there for the outreach center for the counseling center. They don't have enough areas to divide off smoking and nonsmoking areas. I could see it to be a problem there.

The other facilities are much larger and will work. It is potentially very doable.

I think it would have less impact. We do not have any problem with the local determination, because we think they can factor in some of the special situations such as the amount of room that they have; whether they are going to have confidence. Since most of the veterans are smokers, anyway, it would be a problem. Sometimes it is a room problem.

Senator STEVENS. I would urge you to look at different areas. In Alaska, the veterans areas are State supported. They conform to this law already. I have never had a complaint from them.

Mr. BURCH. Alaska is way ahead of this country in a lot of things, like medical centers, Senator, than a lot of areas. I have

seen some of the areas in Texas, and a lot of rundown areas where sometimes they get an old building and sometimes they are using the bottom part of it, frankly, because a lot of the men they are trying to bring into these counseling centers are lower-middle class or from lower areas; they are not the very best of facilities. We think it will be a problem. We think it will be a perception problem.

Before I came here, the last thing I mentioned, Mr. Chairman, before I came in on this issue, I did discuss the issue extensively with the various leaders around the country. What I asked them to do was to go to the member groups, because this was a little different issue than a lot of the ones we take on. I wanted to make sure that I was, in fact, speaking for the men when we talk about it.

Frankly, the thing has kind of mushroomed a little bit. There is really an awful lot of concern. The men that I primarily rely on who work in the VA hospitals and outreach centers feel that it really could have a negative effect. We are very concerned about it.

Senator STEVENS. The only trouble with that is that one of the complaints we have had is that this might limit the ability of the VA and the veterans centers to impose the restrictions that are already in effect. They have areas and facilities already designated totally as nonsmoking, and there are concerns that this bill would require some places in such buildings to be designated for people who want to smoke.

We have to examine that issue. I think some day we ought to examine as well the issue raised by your statistics that is in comparison to: 67 percent of Vietnam veterans smoke, about 30 percent of the public at large who now smoke.

I am chairman of the Defense Appropriations Subcommittee. When I finish this hearing, I think I am going to start a series of hearings as to why the Department of Defense should shove cigarettes at young men, often serving overseas, who don't smoke? You are looking at one of them. I didn't smoke when I went in the Service.

I never even thought about this until the other day here, but everyone I knew didn't smoke when we went in the service. By the time we came back from war, we all smoked. It seems to me the Government is doing a lot to cause smoking. Your statistics would seem to demonstrate this.

We will go into this in the Defense Subcommittee. We need to see what we ought to do about buying cigarettes and throwing them into C rations, in every three-pack meal, that a young serviceman gets when he is overseas.

But I don't dispute your statistics, because in centers—and you are right—I can't remember sitting around with a group of Vietnam war veterans when not almost every one of them smoked.

We assure you, we will do what we can to meet that situation, so that in situations where there is a predominant population of people who smoke, the area designated for nonsmoking will be proportionate to the demand of nonsmokers.

Obviously, we are not going to give the nonsmokers two-thirds of the building and give one-third to the smokers when the population is the other way around, as in the clientele you are talking about. It is there. I don't argue with the statistics you gave us.

Mr. BURCH. I think you touched upon the environmental problem. The way the VA is administered now is not raising discontent. I think the difficulty is we feel the bill would make it mandatory for all facilities, and it may be appropriate or not because of a poor environment.

Senator STEVENS. I think we ought to put into this bill a provision for certification by the local center involved that such a designation is not appropriate; that designation of a nonsmoking area cannot be achieved without seriously disrupting the programs because of space and ventilation limitations. This would give the discretion needed in such areas to meet the conditions you described.

I can think of one particular Veterans Outreach Center that is just one great, big room. It would be awfully hard, I agree.

In S. 1440 we are thinking primarily about the areas of normal Federal buildings. I don't think we would call those normal Federal buildings.

We will do our best, Mr. Burch, to meet the problem you have raised, and I thank you for raising it. Some day you can help me address the basic question which is why should it be veterans, particularly disabled veterans, are in a position where they are against an idea such as this because of their interest in smoking? There is something there that needs to be looked into.

Thank you very much.

Mr. BURCH. Thank you very much for hearing my thoughts.

Senator STEVENS. I appreciate it.

[Mr. Burch's prepared statement follows:]

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STATEMENT OF

J. THOMAS BURCH, JR.

CHAIRMAN

NATIONAL VIETNAM VETERANS COALITION

OCTOBER 2, 1985

The National Vietnam Veterans Coalition is a coalition of 26 organizations throughout the country and represents a broad spectrum of interest. We include in our ranks three of the four largest Vietnam veterans membership organizations. We include several state coalitions and "single issue" organizations built around such issues as Agent Orange, live prisoners of war accountability, judicial review, and small business. Our underlying membership is approximately at 200,000.

We are here today to express our opposition to S 1440. This bill, as we understand it, would require that all federal agencies, including VA hospitals, veterans counseling centers and military bases, to comply with federal guide lines restricting smoking.

BEST COPY AVAILABLE

Our principal difficulty with this bill is that it would disproportionately impact on Vietnam veterans, 67% of whom are smokers, the largest proportion of any segment in our society. Many of these individuals developed the taste for tobacco during their service in the military under highly stressful situations.

Trauma and hardship associated with Vietnam service linger today, and smoking in many cases, helps these veterans cope. Smoking is the only form of enjoyment for many veterans confined to long-term facilities.

A recent study of heavy combat veterans shows that the attitudes of the group as a whole are very negative toward the Veterans Administration. Enforcement of restrictive guidelines can only intensify this hostility and further contribute to the alienation of post traumatic stress disorder victims.

Next, we are concerned about the punitive effect of the fines for violation of the bill. These fines will be disproportionately borne by the most indigent of veterans. This provision can only enhance the distrust already felt by those most in need of assistance. The bill is silent as to the procedures for enforcement and thus leaves open the potential for arbitrary action.

In view of the unique negative experience of Vietnam veterans, in their readjustment to American society, we are concerned about the decision to transfer the regulation of a portion of veterans affairs away from the Veterans Administration to the General Services Administration. We feel that a perspective sympathetic toward these unique readjustment problems is far more likely to emerge from VA than from GSA.

The health aspects of the bill are somewhat overstated. First, the majority of those seeking assistance at a VA hospital or a vet counseling center have physical and emotional problems which far exceed in their own estimation, the claimed hazards of smoking. Second, restrictions may well cause hospital workers to divert their attention from medical care in order to indulge their own cigarette habit.

The bill seems to us to be one more effort by the opponents of smoking to keep individuals from smoking. Smoking should be a matter of individual choice and not subject to arbitrary fiat by a remote bureaucracy.

Lastly, in the face of a \$200 billion federal deficit and budget cutbacks, the very substantial implementation costs, (over \$520 million, according to one responsible estimate) of this legislation is money better spent on direct assistance to veterans.

BEST COPY AVAILABLE

Senator STEVENS. Our next witnesses are Mr. Robert Cahn, Deputy Director of the Office of Management Operations, Agency for International Development, and William Alli, the chairman of the Health and Safety Committee, Local 1534, from the American Federation of Government Employees.

Good morning, gentlemen.

TESTIMONY OF ROBERT A. CAHN, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT OPERATIONS, AGENCY FOR INTERNATIONAL DEVELOPMENT; AND WILLIAM E. ALLI, CHAIRMAN, HEALTH AND SAFETY COMMITTEE, LOCAL 1534, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. CAHN. Good morning.

Mr. Chairman, on August 22 of this year, the Agency for International Development, AID, revised its smoking policy in the direction of greater restrictions against smoking in the workplace. I understand that the subcommittee is interested in AID's experience with the new policy.

The changes from former policy were moderate. The agency's policy had followed precisely the minimum requirements which the General Services Administration issued several years ago in the Federal Property Management Regulations.

Under these regulations, smoking is prohibited in certain areas such as conference rooms and elevators, but smoking is allowed in shared work areas, unless all employees sharing the area agree that it be designated a no-smoking area.

Thus, one smoker can prevail over the wishes of several non-smoking coworkers. AID's new policy stipulates that smoking is not allowed in shared work areas unless all employees sharing the area agree to permit smoking.

Thus, the tables are reversed, and one nonsmoker can now prevail over the wishes of several smoking coworkers. In addition, the new policy designates common work stations, such as at copiers, or word processor terminals, as no-smoking areas.

AID's smoking policy changes were made after considering the rights of all employees and soliciting their opinions. AID's Occupational Safety and Health Advisory Committee, OSHAC, a committee which AID established pursuant to executive order, included a question about office air pollution and tobacco smoke in a questionnaire which it prepared in February 1984 to obtain information on employee opinions and concerns about safety and health.

Based on the substantial response and apparent general concern over smoking, OSHAC formulated and recommended a revised, more restrictive smoking policy for the agency. The agency decided not to adopt OSHAC's recommendations until a more precise understanding of employee opinion could be gained, so OSHAC prepared a new, more detailed questionnaire only about smoking, which was distributed to employees in February 1985.

OSHAC compiled the results which were reported to employees on August 9, 1985, just this last year.

AID's smoking policy changes were made only after informing employee bargaining units. Actually, this step became a formality because the employee bargaining units are represented on OSHAC.

The committee's charter provides for each of the two bargaining units to nominate two of the eight regulate members. So there are four employee bargaining unit representatives on the committee.

The changes appear not to have caused any serious disruption, nor have they elicited any widespread complaints. Were there any, my office, which issued the policy, should have heard about them. In fact, I have heard little comment of any kind.

AID's new smoking policy applies to Washington offices only. It is not global. Although AID has offices around the world, smoking policy is handled as a local issue which can be more responsive and sensitive to local concerns and outlook.

Copies of the AID notices with the new smoking policy and the results of the questionnaire on smoking have been provided to the subcommittee.

I will be pleased to answer, Mr. Chairman, any questions which you may have.

Senator STEVENS. Thank you very much.

Mr. Alli, you have a statement, do you not?

Mr. ALLI. Yes, sir.

Senator STEVENS. Could we hear that one next, please?

Mr. ALLI. Yes.

My name is William Alli, and I am chairman of the Health and Safety Committee of Local 1534. I am representing only that organized labor group.

I notice there is no other union representative here, but I contacted the AFL-CIO and the American Federation of Government Employees, and I understand that they do not oppose the general thrust of this bill and that they do have some disagreement over certain types of implementation.

We do have members primarily in the United States, but we have members overseas, as well, and they work in buildings. We have had complaints from them, and we do feel that your bill would apply to overseas Federal buildings, as well.

I want to thank you for the privilege of testifying in favor of this legislation. Our union's experience over the past several years directly bears on what S. 1440 addresses.

In the past 5 years or so, local 1534 has seen a rapidly growing concern of Federal employees with indoor air pollution, primarily tobacco smoke. To deal with the problem, local 1534 has worked assiduously in close partnership with management officials at the U.S. Agency for International Development, AID. Our forum for dialog has been mainly AID's Occupational Safety and Health Advisory Committee, a joint labor-management committee.

Between 1980 and 1983, AID twice issued a notice to all AID employees reminding them of AID's smoking regulations, which were the same as those of the General Services Administration. The notice stressed the importance of courtesy in dealing with the smoking problem.

Unfortunately, the smoking problem kept getting worse. Courtesy was not enough. So in February 1985, the advisory committee took a detailed survey of smoking in the workplace. The survey got over 1,000 responses, and I have them here.

The survey responses were astounding and fully justify your legislation to control smoking in the workplace. In attachment C, you

will find a copy of our questionnaire and detailed statistical tables of the responses. Ninety percent of the responding employees supported limits on smoking. We offered them a variety of choices, going from one extreme to another. Thirty-eight percent supported a complete ban on smoking. Thirty-nine percent disagreed on a total ban but wanted controls on smoking beyond the GSA's minimum requirements.

Clearly, the overwhelming majority of employees found the current GSA regulations to be inadequate.

Shortly before the survey results were compiled and published, the agency's physicians and other health professionals submitted a petition to the AID Administrator. The petition called for regulations to limit smoking to designated areas, and cited health reasons. The petition was signed by 76 persons having over 100 academic degrees in health sciences and related fields and having many years of professional experience around the world.

Independently, AID employees outside the health professions set up a clean indoor air coalition and started collecting signatures of employees on a similar petition to the Administrator.

On August 22, AID formally accepted recommendations by the advisory committee and issued new regulations. AID regulations now require unanimous consent of employees in a shared work area before smoking is permitted there. GSA regulations require unanimous consent to prohibit smoking.

I hope your legislation will call for regulations closer to the AID type and not like the GSA's for shared office space.

AID prohibits smoking in work areas containing shared office equipment, word processors, copying machines, et cetera. Our Agency also prohibits employees from carrying lit or smoldering tobacco products into no-smoking areas.

AID's regulations still do not protect employees in lavatories, and they still contain GSA's ambiguous language on waiting areas. Nevertheless, the employees are now much better off.

Since August 22, we have had no formal complaints or grievances against the new regulations. I know of no incidents, divisiveness or other problems. In fact, we detect a less contentious atmosphere and more cooperation between smokers and nonsmokers. We haven't called the guards, riot squads or S.W.A.T. teams.

From our experience, we can state that smoking regulations are like other health and safety regulations. We need them to provide a setting in which courtesy can function without compromising the basic orientation to protecting human health.

S. 1440 is basically good legislation and is in Congress' tradition of legislating conditions of employment such as minimum wage, flexitime, and occupational safety and health.

You are helping to avoid possible disruptive struggles by employees, agency-by-agency, as they seek to get what they have a right to: protection from air pollution in the Federal workplace.

As a union official, I would suggest one modification to reflect the valuable role organized labor can play in the implementation of the legislation.

In section 3, it would be useful to require the Administrator of the General Services Administration and other agencies heads to consult with employee union representatives so that the two could

jointly take surveys and examine physical facilities in preparation for orderly transition to the new regulations. Labor and management could jointly sponsor employee information campaigns and offer smoking cessation sessions.

I commend this subcommittee for its efforts to craft sound legislation based on solid scientific knowledge. Please push on, because your bill represents what the majority of Federal employees are in favor of.

Senator STEVENS. Thank you very much.

As a matter of fact, as I am sure you know, we have a great many Federal employees in my State. This bill has become a matter of public knowledge and as a matter of fact, they live in an area, as I have said before today, where the State law is similar to our bill. We have had no complaints from employees individually or from their labor representatives.

Mr. Cahn, Mr. Alli, thank you very much. I just wonder why we continue to get statements saying that people in the the Federal Government don't support this bill. I wonder what it would cost if we asked for a questionnaire like yours to be presented to all Federal employees. I would assume the results would be about the same as yours.

What did it cost you to do that, do you know?

Mr. CAHN. I haven't figured the cost, but I am going to make an estimate. I am thinking of the cost of printing first. Probably \$300 or \$400; maybe \$500 to print and distribute the questionnaire itself and then the results to the employees.

Senator STEVENS. How many employees did you deal with in this?

Mr. CAHN. We have about 2,500 employees here in Washington. That was the distribution, and there were several pages. There were, I think, a cover notice and the questionnaire itself. That was two pages. Distribution costs would be small because we would be putting them in the building mail anyway.

Then the report of the survey itself. Obviously having solicited employee opinion, we felt a need to report back and tell employees what they had told us. That took several pages. In addition to these printing costs there was some employee time spent on compiling the results. That did take quite a bit of effort to compile and input the data.

Senator STEVENS. That is very good. I commend you both. Your suggestion about consultation with the employee representative is, I think, a good one. It has obviously worked in your situation. I believe that we should make certain that such consultation takes place. We will put that provision in our bill. Thank you for, suggesting it.

I don't have any questions. I think we have got a very persuasive case for what we are trying to do. You did it on your own, and is what you are telling us is that it has worked.

Mr. ALLI. That's right. In fact, I was about to say, after seeing your bill, that I have seen the future, and it works. It is unfortunate that the person who first said that was John Reed.

Senator STEVENS. Yes, that is right. I remember some of those quotes, as a matter of fact.

Thank you very much. I appreciate your courtesy in coming.

[The prepared statements of Messrs. Cahn, with attachments, and Alli follow.]

Testimony of Robert A. Cahn
Deputy Director
Office of Management Operations
Agency for International Development

before The Subcommittee on Civil Service, Post Office and
General Services, Senate Committee on Governmental
Affairs

On October 2, 1985

Concerning S. 1440, the Non-Smokers Rights Act of 1985

On August 22, 1985, the Agency for International Development (A.I.D.) revised its smoking policy in the direction of greater restrictions against smoking in the workplace. I understand that the Subcommittee is interested in AID's experience with this new policy.

The changes from former policy were moderate. The Agency's policy had followed precisely the minimum requirements which the General Services Administration issued several years ago in the Federal Property Management Regulations. Under these regulations, smoking is prohibited in certain areas such as conference rooms and elevators, but smoking is allowed in shared work areas unless all employees sharing the area agree that it be designated a "no smoking" area. Thus, one smoker can prevail over the wishes of several non-smoking co-workers. A.I.D.'s new policy stipulates that smoking is not allowed in shared work areas unless all employees sharing the area agree

to permit smoking. Thus, the tables are reversed, and one non-smoker can now prevail over the wishes of several smoking co-workers. In addition, the new policy designates common work stations, such as at copiers and word processor terminals, as "no smoking" areas.

A.I.D.'s smoking policy changes were made after considering the rights of all employees and soliciting their opinions.

A.I.D.'s Occupational Safety and Health Advisory Committee (OSHAC, a committee which A.I.D. established pursuant to Executive Order 12196) included a question about office air pollution and tobacco smoke in a questionnaire which it prepared in February 1984 to obtain information on employee opinions and concerns about safety and health. Based on the substantial response and apparent concern over smoking, OSHAC formulated and recommended a revised, more restrictive smoking policy for the Agency. The Agency decided not to adopt OSHAC's recommendations until a more precise understanding of employee opinion could be gained, so OSHAC prepared a questionnaire which was distributed to employees in February 1985. OSHAC compiled the results which were reported to employees on August 9, 1985.

A.I.D.'s smoking policy changes were made only after informing employee bargaining units. Actually, because the employee bargaining units are represented on OSHAAC (The Committee's charter provides for each of the two bargaining units to nominate two of the eight regular members.), this step became a formality.

The changes appear not to have caused any serious disruption nor have they elicited any widespread complaints. Were there any, my office, which issued the policy, should have heard about them.

A.I.D.'s new smoking policy is not global. Although A.I.D. has offices around the world, smoking policy is handled as a local issue which can be more responsive and sensitive to local concerns and outlook.

Copies of A.I.D.'s notices with the new smoking policy and the results of the questionnaire on smoking have been provided to the subcommittee.

I will be pleased to answer any questions the members may have.

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AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON D.C. 20523

AID/W Notice
M/SER/MO

Issue Date: 8-22-85

SUBJECT: Regulation of Smoking in Buildings Occupied by AID

Employee response to the questionnaire prepared last February by AID's Occupational Safety and Health Advisory Committee (OSHAC) indicated a concern over air quality in work spaces, especially pollution from tobacco smoke, and a concern over the balancing of the interests of smokers and nonsmokers. On the basis of the survey results and its further research and deliberations, OSHAC recommended revisions in AID's smoking policy which had been expressed in an AID/W Notice dated October 13, 1983. On the basis of OSHAC's recommendations, the Agency's policy is revised as stated in the following paragraphs.

AID recognizes the right of its employees and their visitors to an environment reasonably free from pollution, including pollution from tobacco smoke. However, the Agency recognizes the right of each employee to decide whether he or she will smoke or not smoke. It will continue its policy of permitting smoking provided that such action does not endanger life or property and does not expose nonsmokers to unhealthful levels of pollution.

In furtherance of this policy:

1. A private office or other unshared work space may be designated a "no smoking" area by the occupant.
2. Spaces shared by two or more employees are designated "no smoking" areas unless all employees sharing the space agree to permit smoking.
3. Spaces containing shared office equipment and supplies (e.g., word processor work stations and copying machines) are designated "no smoking" areas.
4. The carrying of lit or smoldering tobacco products in "no smoking" areas is not allowed.
5. Supervisors should strive to arrange work areas so that employees who desire to smoke can be accommodated, provided that:

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- a. efficiency of work units will not be impaired.
- b. additional space will not be required, and
- c. costly alterations to the space or procurement of additional office equipment will not be necessary.

In implementing this smoking policy for employees and space under their jurisdiction, supervisors shall strive to maintain an equitable balance between the rights of nonsmokers and those of smokers.

Additionally, as stipulated by Federal Property Management Regulations (FPMR 101-20.109-10):

6. Smoking is prohibited in the following areas:
 - a. Auditoriums, classrooms and conference rooms.
(Exceptions on a case-by-case basis require the unanimous consent of those present). Building managers shall ensure that signs and adequate receptacles for smoking refuse are placed outside the entrances to such rooms.
 - b. Elevators.
 - c. Shuttle vehicles.
 - d. Hazardous areas.
7. Smoking is not permitted in libraries, except in designated areas.
8. "No smoking" areas shall be established in cafeterias, and shall be identified by appropriate signs.
9. In medical care facilities such as medical clinics and health units, smoking is restricted to staff lounges, private offices, and specifically designated areas.
10. Waiting areas shall be divided into areas designated "smoking" and "no smoking" when size allows.

AID will provide ash trays or receptacles in locations where smoking is permitted and, where possible and appropriate, near the entrances to "no smoking" areas. AID will also provide official "no smoking" signs for use in areas designated "no smoking" and on the outside of doors leading directly into such "no smoking" offices or areas. Requests for these signs should be submitted on Form AID 5-7 to the Buildings Management Branch, M/SER/MO/RM, Room 260, SA-11.

The basis for a successful policy on smoking in Agency facilities, as with any other working relationship, is mutual courtesy and respect for the rights of one's fellow workers, both smokers and nonsmokers.

DISTRIBUTION:

List H, Position 5 (All Employees, AID/W)

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON D C 20523

AID/W Notice
M/SER/MO
August 8, 1985
Issue Date: 8-9-85

SUBJECT: Results of the AID Questionnaire on Smoking

In May of this year, the Agency's Occupational Safety and Health Committee (OSHAC) and M/SER/MO conducted a survey of the Washington-based staff to obtain a specific measure of employee attitude with regard to smoking in the workplace. The data obtained from the 1,015 returned questionnaires has been tabulated and is attached to this notice.

We wish to extend our sincere appreciation to all who took the time to express themselves on this matter.

Attachment: a/s

DISTRIBUTION:

List H, Position 5 (All Employees, AID/W)

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ATTACHMENT I
EMPLOYEE RESPONSES TO QUESTION NUMBER 1

Response to statement	All		Smokers		Non-smokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(a) Everyone should have the right to smoke in the work-place wherever he/she wishes....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	116	11.4	71	43.3	44	5.2	1	12.5
--No opinion.....	856	84.3	78	47.6	772	91.6	6	75.0
--No response.....	31	3.1	12	7.3	18	2.1	1	12.5
	12	1.2	3	1.8	9	1.1	-	-
(b) Working around tobacco smoke is harmful to one's health....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	797	78.5	56	34.1	736	87.3	5	62.5
--No opinion.....	87	8.6	35	21.3	49	5.8	3	37.5
--No response.....	120	11.8	69	42.1	51	6.0	-	-
	11	1.1	4	2.4	7	.8	-	-
(c) Smokers I work with are generally considerate of non-smokers' rights.....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	578	56.9	139	84.8	434	51.5	5	62.5
--No opinion.....	338	33.3	13	7.9	322	38.2	3	37.5
--No response.....	83	8.2	10	6.1	73	8.7	-	-
	16	1.6	2	1.2	14	1.7	-	-
(d) Smoking should be banned from the workplace altogether.....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	390	38.4	7	4.3	378	44.8	5	62.5
--No opinion.....	504	49.7	149	90.9	353	41.9	2	25.0
--No response.....	98	9.7	6	3.7	91	10.8	1	12.5
	23	2.3	2	1.2	21	2.5	-	-
(e) Smoking in a work area should be allowed only when all employees using that space agree....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	665	65.5	73	44.5	587	69.6	5	62.5
--No opinion.....	250	24.6	74	45.1	174	20.6	2	25.0
--No response.....	68	6.7	10	6.1	57	6.8	1	12.5
	32	3.2	7	4.3	25	3.0	-	-
(f) Smoking should be confined to a smoker's private office or specially designated areas.....								
--Agree.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Disagree.....	792	78.0	86	52.4	701	83.2	5	62.5
--No opinion.....	168	16.6	66	40.2	99	11.7	3	37.5
--No response.....	31	3.1	7	4.2	24	2.8	-	-
	24	2.4	5	3.0	19	2.3	-	-

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EMPLOYEE RESPONSES TO QUESTIONS NUMBER 1 AND 2

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(2) Does tobacco smoke, in or around your workplace, cause you any problem?.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	245	24.1	2	1.2	241	28.6	2	25.0
--Yes, occasionally.....	381	37.5	17	10.4	359	42.6	5	62.5
--No or rarely.....	381	37.5	145	88.4	235	27.9	1	12.5
--No response.....	8	.8	-	-	8	.9	-	-
(3) If you answered yes to #2, where and how often do you find tobacco smoke to be a problem?								
(a) Own individual office.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	90	8.9	3	1.8	86	10.2	1	12.5
--Yes, occasionally.....	237	23.3	4	2.4	230	27.3	3	37.5
--No or rarely.....	209	20.6	11	6.7	196	23.3	2	25.0
--No response.....	479	47.2	146	89.0	331	39.3	2	25.0
(b) Word processor or Xerox area.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	111	10.9	1	.6	108	12.8	2	25.0
--Yes, occasionally.....	207	20.4	4	2.4	203	24.1	-	-
--No or rarely.....	198	19.5	13	7.9	181	21.5	4	50.0
--No response.....	499	49.2	146	89.0	351	41.6	2	25.0
(c) Co-workers' office.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	199	19.6	3	1.8	194	23.0	2	25.0
--Yes, occasionally.....	291	28.7	7	4.3	281	33.3	3	37.5
--No or rarely.....	81	8.0	11	6.7	70	8.3	-	-
--No response.....	444	43.7	143	87.2	298	35.3	3	37.5
(d) Reception area.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	140	13.8	3	1.8	136	16.1	1	12.5
--Yes, occasionally.....	210	20.7	1	.6	206	24.4	3	37.5
--No or rarely.....	166	16.4	14	8.5	151	17.9	1	12.5
--No response.....	499	49.2	146	89.0	350	41.5	3	37.5
(e) Hallway.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	110	10.8	3	1.8	107	12.7	-	-
--Yes, occasionally.....	181	17.8	2	1.2	177	21.0	2	50.0
--No or rarely.....	220	21.7	13	7.9	204	24.2	3	37.5
--No response.....	504	49.7	146	89.0	355	42.1	3	37.5
(f) Eating area.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	158	15.6	4	2.4	153	18.1	1	12.5
--Yes, occasionally.....	194	19.1	7	4.3	185	21.9	2	25.0
--No or rarely.....	160	15.8	9	5.5	149	17.7	2	5.5
--No response.....	503	49.6	144	87.8	356	42.2	3	7.5

EMPLOYEE RESPONSES TO QUESTIONS NUMBER 2 AND 3 (continued)

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(g) Restroom.....	<u>1,015</u>	<u>100.0</u>	<u>164</u>	<u>100.0</u>	<u>843</u>	<u>100.0</u>	<u>8</u>	<u>100.0</u>
--Yes, often.....	183	18.0	2	1.2	181	21.5	-	-
--Yes, occasionally.....	203	20.0	2	1.2	197	23.4	-	50.0
--No or rarely.....	141	13.9	15	9.1	125	14.8	1	12.5
--No response.....	488	48.1	145	88.4	340	40.3	2	25.0
(h) Conference room.....	<u>1,015</u>	<u>100.0</u>	<u>164</u>	<u>100.0</u>	<u>843</u>	<u>100.0</u>	<u>8</u>	<u>100.0</u>
--Yes, often.....	187	18.4	8	4.9	179	21.2	-	-
--Yes, occasionally.....	230	22.7	6	3.7	221	26.2	2	37.5
--No or rarely.....	131	12.9	8	4.9	121	14.4	-	25.0
--No response.....	467	46.0	142	86.6	322	38.2	2	37.5
(i) Elevator.....	<u>1,015</u>	<u>100.0</u>	<u>164</u>	<u>100.0</u>	<u>843</u>	<u>100.0</u>	<u>8</u>	<u>100.0</u>
--Yes, often.....	84	8.3	6	3.7	77	9.1	1	12.5
--Yes, occasionally.....	189	18.6	4	2.4	183	21.7	2	25.0
--No or rarely.....	211	20.8	11	6.7	198	23.5	2	25.0
--No response.....	531	52.3	143	87.2	385	45.7	3	37.5
(j) Other (specified).....	<u>1,015</u>	<u>100.0</u>	<u>164</u>	<u>100.0</u>	<u>843</u>	<u>100.0</u>	<u>8</u>	<u>100.0</u>
--Yes, often.....	17	1.7	2	1.2	15	1.8	-	-
--Yes, occasionally.....	19	1.9	-	-	19	2.3	-	-
--No or rarely.....	1	.8	-	-	1	.1	-	-
--No response.....	978	96.4	162	98.8	806	95.8	8	100.0

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EMPLOYEE RESPONSES TO QUESTION NUMBER 4

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(4.A) Do you have a condition that tobacco smoke aggravates?	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	426	42.0	15	9.1	406	48.2	5	62.5
--No.....	546	53.8	146	89.0	398	47.2	2	25.0
--No response.....	43	4.2	3	1.8	39	4.6	1	12.5
(a) Allergy/Sinus.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	336	33.1	11	6.7	321	38.1	4	50.0
--No response.....	679	66.9	153	93.3	522	61.9	4	50.0
(b) Heart Disease.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	13	1.3	1	.6	11	1.3	1	12.5
--No response.....	1,002	98.7	163	99.4	832	98.7	7	87.5
(c) Emphysema.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	8	.8	1	.6	5	.6	2	25.0
--No response.....	1,007	99.2	163	99.4	838	99.4	6	75.0
(d) Bronchitis.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	42	4.1	3	1.8	37	4.4	2	25.0
--No response.....	973	95.9	161	98.2	806	95.6	6	75.0
(e) High Blood Pressure.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	51	5.0	1	.6	49	5.8	1	12.5
--No response.....	964	95.0	163	99.4	794	94.2	7	87.5
(f) Migraine Headache.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	77	7.6	3	1.8	72	8.5	2	25.0
--No response.....	938	92.4	161	98.2	771	91.5	6	75.0
(g) Other.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	101	10.0	3	1.8	95	11.3	3	37.5
--No response.....	914	90.0	161	98.2	748	88.7	5	62.5

1. Fifty of these indicated eye problems.

EMPLOYEE RESPONSES TO QUESTION NUMBER 5

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(5) Do you share an office or work area with one or more other employees?.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	573	56.5	88	53.7	482	57.2	3	37.5
--No.....	432	42.6	73	44.5	355	42.1	4	50.0
--No response.....	10	1.0	3	1.8	6	.7	1	12.5
(a) If yes, are any of these employees smokers?.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	397	39.1	71	43.3	324	38.4	2	25.0
--No.....	204	20.1	21	12.8	180	21.4	3	37.5
--No response.....	414	40.8	72	43.9	339	40.2	3	37.5

EMPLOYEE RESPONSES TO QUESTION NUMBER 6

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(6) Do you currently smoke at work?.....	1,015	100.0	164	100.0	843	100.0	8	100.0
--Yes.....	164	16.2	164	100.0	-	-	-	-
--No.....	843	83.1	-	-	843	100.0	-	-
--No response.....	8	.8	-	-	-	-	8	100.0

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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1534
Telephone: (703) 235-2120

Room 737 Pomponio Plaza (SA-14)
U.S. Department of State
Washington DC 20520



STATEMENT OF WILLIAM E. ALLI,
Chairman, Health & Safety Committee, Local 1534
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Before the Subcommittee on Civil, Post Office, & General Services
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
2 October 1985

Thank you for the privilege of testifying in favor of the Non-Smokers Rights Act of 1985.

Our union's experiences over the past several years directly bears on what Senate Bill 1440 addresses. In the past five years or so Local 1534 has seen a rapidly growing concern of Federal employees with indoor air pollution, primarily tobacco smoke.

To deal with the problem, Local 1534 has worked assiduously in close partnership with management officials at the U.S. Agency for International Development (A.I.D.). Our forum for dialog has been mainly A.I.D.'s Occupational Safety and Health Advisory Committee, a joint labor-management committee.

Between 1980 and 1983, A.I.D. twice issued a notice to all A.I.D. employees reminding them of A.I.D.'s smoking regulations which were the same as those of the General Services Administration. The notice stressed the importance of courtesy in dealing with the smoking problem.

Unfortunately the smoking problem kept getting worse. So in February 1985 the Advisory Committee took a detailed survey of smoking in the workplace. The survey got over 1,000 responses.

The survey responses were astounding and fully justify legislation to control smoking in the Federal workplace. Ninety percent of the responding employees supported limits on smoking. Thirty-eight percent supported a complete ban on smoking. Thirty-nine percent disagreed on a total ban but wanted controls on smoking beyond the GSA's minimum requirements. Clearly the overwhelming majority of employees found the current GSA regs to be inadequate.

Department of State, Agency for International Development,
Overseas Private Investment Corporation

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Shortly before the survey results were compiled and published, the Agency's physicians and other health professionals submitted a petition to the A.I.D. Administrator. The petition called for regulations to limit smoking to designated areas and cited health reasons. The petition was signed by 76 persons having over 100 academic degrees in health sciences and related fields and having many years of professional experience around the world.

Independently, A.I.D. employees outside the health professions set up a Clean Indoor Air Coalition and started collecting signatures of employees on a similar petition to the Administrator.

On August 22, 1985 A.I.D. formally accepted recommendations by the Advisory Committee and issued new regulations. A.I.D.'s regulations now require unanimous consent of employees in a shared work area before smoking is permitted there. GSA regulations require unanimous consent to prohibit smoking.

A.I.D. prohibits smoking in areas containing shared office equipment (word processor work stations, copying machines, etc.). Our agency also prohibits employees from carrying lit or smoldering tobacco products into no-smoking areas.

A.I.D.'s regulations still do not protect employees in lavatories and they still contain GSA's ambiguous language on waiting areas. Nevertheless, the employees are now much better off.

Since August 22 we have had no formal complaints or grievances against the new regulations. I know of no incidents, divisiveness, or other problems. In fact we detect a less contentious atmosphere and more cooperation between smokers and non-smokers.

From our experience we can state that smoking regulations are like other health and safety regulations. We need them to provide a setting in which courtesy can function, without compromising the basic orientation to protecting human health.

Senate Bill 1440 is basically good legislation and is in Congress's tradition of legislating conditions of employment, such as minimum wage, flexitime, and occupational safety and health. You are helping to avoid possible disruptive struggles by employees, agency by agency, as they seek to get what they have a right to-- protection from air pollution in the Federal workplace.

As a union official I would suggest one modification to reflect the valuable role labor can play in the implementation of the legislation. In Section 3 it would be useful to require the Administrator of the General Services Administration, and other Agency heads, to consult with employee union representatives so that the two could jointly take surveys and examine physical facilities in preparation for orderly transition to the new regulations. Labor and management could jointly sponsor employee information campaigns and offer smoking cessation sessions.

I commend this Subcommittee for its efforts to craft sound legislation based on solid scientific knowledge. Please push on because your Bill represents what the majority of Federal employees are in favor of.

NOTE: Attachments are:

A. A.I.D. Regulation .

B. GSA Regulation.

C. Occupational Safety and Health Advisory Committee Questionnaire on Smoking in AID and Employee Responses.

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

AID/W Notice
H/SER/MQ

Issue Date: 8-22-85

SUBJECT: Regulation of Smoking in Buildings Occupied by AID

Employee response to the questionnaire prepared last February by AID's Occupational Safety and Health Advisory Committee (OSHAC) indicated a concern over air quality in work spaces, especially pollution from tobacco smoke, and a concern over the balancing of the interests of smokers and nonsmokers. On the basis of the survey results and its further research and deliberations, OSHAC recommended revisions in AID's smoking policy which had been expressed in an AID/W Notice dated October 15, 1983. On the basis of OSHAC's recommendations, the Agency's policy is revised as stated in the following paragraphs.

AID recognizes the right of its employees and their visitors to an environment reasonably free from pollution, including pollution from tobacco smoke. However, the Agency recognizes the right of each employee to decide whether he or she will smoke or not smoke. It will continue its policy of permitting smoking provided that such action does not endanger life or property and does not expose nonsmokers to unhealthy levels of pollution.

In furtherance of this policy:

1. A private office or other unshared work space may be designated a "no smoking" area by the occupant.
2. Spaces shared by two or more employees are designated "no smoking" areas unless all employees sharing the space agree to permit smoking.
3. Spaces containing shared office equipment and supplies (e.g., word processor work stations and copying machines) are designated "no smoking" areas.
4. The carrying of lit or smoldering tobacco products in "no smoking" areas is not allowed.
5. Supervisors should strive to arrange work areas so that employees who desire to smoke can be accommodated, provided that:

- a. efficiency of work units will not be impaired.
- b. additional space will not be required, and
- c. costly alterations to the space or procurement of additional office equipment will not be necessary.

In implementing this smoking policy for employees and space under their jurisdiction, supervisors shall strive to maintain an equitable balance between the rights of nonsmokers and those of smokers.

Additionally, as stipulated by Federal Property Management Regulations (FPMR 101-20.109-10):

6. Smoking is prohibited in the following areas:

- a. Auditoriums, classrooms and conference rooms.
(Exceptions on a case-by-case basis require the unanimous consent of those present). Building managers shall ensure that signs and adequate receptacles for smoking refuse are placed outside the entrances to such rooms.
- b. Elevators.
- c. Shuttle vehicles.
- d. Hazardous areas.

7. Smoking is not permitted in libraries, except in designated areas.

8. "No smoking" areas shall be established in cafeterias, and shall be identified by appropriate signs.

9. In medical care facilities such as medical clinics and health units, smoking is restricted to staff lounges, private offices, and specifically designated areas.

10. Waiting areas shall be divided into areas designated "smoking" and "no smoking" when size allows.

AID will provide ash trays or receptacles in locations where smoking is permitted and, where possible and appropriate, near the entrances to "no smoking" areas. AID will also provide official "no smoking" signs for use in areas designated "no smoking" and on the outside of doors leading directly into such "no smoking" offices or areas. Requests for these signs should be submitted on Form AID 5-7 to the Buildings Management Branch, H/SER/MQ/BN, Room 260, SA-11.

The basis for a successful policy on smoking in Agency facilities, as with any other working relationship, is mutual courtesy and respect for the rights of one's fellow workers, both smokers and nonsmokers.

DISTRIBUTION:

List H, Position 5 (All Employees, AID/W)

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Attachment A

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GENERAL SERVICES ADMINISTRATION, 41 CFR Part 101-20, Management of Buildings and Grounds; Revision of Building Rules and Regulations.

■ 101-20.109-10 Regulation of Smoking.

(Ref: Federal Register/ Vol. 44, No. 74/ Monday, April 16, 1979)

Regulations for controlling smoking in GSA-controlled buildings and facilities are set forth below. These regulations are intended to be supplemented by additional agency action. It is not the intent of GSA to assume the enforcement role of these regulations, except in public areas or in joint-use space. It is intended that agency guidelines will provide administrative procedures for enforcement within space assigned in them and for resolution of agency/employee complaints. Local laws should also be complied with wherever applicable.

"Smoking" is defined, for the purpose of these regulations, to include the carrying of lit tobacco products.

(a) Smoking is prohibited in the following areas:

(1) Auditoriums, classrooms, and conference rooms. Buildings managers shall ensure that signs and adequate receptacles for smoking refuse are placed outside the entrances to auditoriums, classrooms, and conference rooms. Exceptions to this policy in agency assigned space may be granted on a case-by-case basis by the agency head.

(2) Elevators. "No smoking" signs shall be posted in elevators, and adequate receptacles shall be placed outside the entrances.

(3) Shuttle vehicles.

(4) Hazardous areas. Each agency shall post and enforce "no smoking" rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors, or in all locations where there is a collection of readily ignitable, combustible materials.

(b) Smoking is not permitted in libraries, except in those nonstack areas that are designated as "smoking" areas. These areas shall be established by the buildings manager in collaboration with the heads of occupant agencies.

(c) Employees occupying an office may unanimously declare that office a "no smoking" area.

(d) "No smoking" areas shall be established in cafeterias. These areas shall be designated as "no smoking" areas by each building manager, in collaboration with the heads of the occupant agencies. The areas designated shall be based upon an estimate of the number of smoking and nonsmoking patrons served. This should be adjusted on the basis of local experience. The "no smoking" areas shall be identified by appropriate signs.

(e) The establishment of "no smoking" work areas in open space should be thoroughly investigated. Supervisors should plan work space in a manner so that employees who desire a "no smoking" area can be accommodated. Provided, That (1) efficiency of work units will not be impaired, (2) additional space will not be required, and

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GSA, 41 CFR 101-20.109-10, Regulation of Smoking (continued)

(3) costly alterations to the space or procurement of additional office equipment will not be necessary. Agencies are responsible for ensuring that "no smoking" areas are identified by appropriate signs. In establishing and continuing a smoking policy in work areas under their jurisdiction, supervisors should strive to maintain an equitable balance between the rights of nonsmokers and those of smokers.

(f) In medical care facilities such as medical clinics and health units, smoking is restricted to staff lounges, private offices, and specifically designated areas.

(g) Waiting areas shall be divided into areas designated as "smoking" and "no smoking" areas when size allows.

(h) Agencies are responsible for providing adequate noncombustible ash trays or receptacles in locations where smoking is permitted.

(Sec. 205(c), 83 Stat. 390-40 U.S.C. 480(c))

EFFECTIVE DATE: April 16, 1979.

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Attachment B

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OCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE (OSHAC)
Questionnaire on Smoking in AID

1. Please indicate your response to the following statements:

	Agree	No Opinion	Disagree
(a) Everyone should have the right to work in the workplace wherever he/she wishes.....			
(b) Working around tobacco smoke is harmful to one's health.....			
(c) Smokers I work with are generally considerate of non-smokers' rights.....			
(d) Smoking should be banned from the workplace altogether.....			
(e) Smoking in a work area should be allowed only when all employees using that space agree.....			
(f) Smoking should be confined to a smoker's private office or specially designated areas.....			

2. Does tobacco smoke, in or around your workplace, cause you any problem? Yes, often (go to #3)
Yes, occasionally (go to #3)
No or rarely (go to #4)

3. If you answered yes to #2, where and how often do you find tobacco smoke to be a problem?

	Often	Occasionally	Rarely or Never
(a) Own individual office.....			
(b) Word Processor or Xerox area.....			
(c) Co-workers' office.....			
(d) Reception area.....			
(e) Mailroom.....			
(f) Eating area.....			
(g) Restroom.....			
(h) Conference room.....			
(i) Elevator.....			
(j) Other (specify).....			

4. (A) Do you have a condition that tobacco smoke aggravates? Yes No
(B) If yes, please check the following:

(a) Allergy/Sinus.....	(g) High Blood Pressure.....
(b) Heart Disease.....	(h) Migraine Headache.....
(c) Emphysema.....	(i) Other (specify).....
(d) Bronchitis.....	

5. Do you share an office or work area with one or more other employees? Yes No

(a) If yes, are any of these employees smokers? Yes No

6. Do you currently smoke at work? Yes No

7. Your age 8. Sex (M/F) 9. Grade or rank 10. Building No.

ADDITIONAL COMMENTS ON SMOKING IN THE WORKPLACE:

ATTACHMENT C. AID EMPLOYEE RESPONSES TO WORKPLACE SMOKING SURVEY

QUESTION NUMBER 1

Responses to statement	All		Smokers		Non-smokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(a) Everyone should have the right to smoke in the workplace wherever he/she wishes.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	116	11.4	71	43.3	44	5.2	1	12.5
--Disagree.....	856	84.3	78	47.6	772	91.6	6	75.0
--No opinion.....	31	3.1	12	7.3	14	1.7	1	12.5
--No response.....	12	1.2	3	1.8	9	1.1	-	-
(b) Working around tobacco smoke is harmful to one's health.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	797	78.5	56	34.1	736	87.3	5	62.5
--Disagree.....	87	8.6	35	21.3	49	5.8	3	37.5
--No opinion.....	120	11.8	69	42.1	51	6.0	-	-
--No response.....	11	1.1	4	2.4	7	.8	-	-
(c) Smokers I work with are generally considerate of non-smokers' rights.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	578	56.9	139	84.8	434	51.5	5	62.5
--Disagree.....	338	33.3	13	7.9	322	38.2	3	37.5
--No opinion.....	83	8.2	10	6.1	73	8.7	-	-
--No response.....	16	1.6	2	1.2	14	1.7	-	-
(d) Smoking should be banned from the workplace altogether.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	390	38.4	7	4.3	378	44.8	5	62.5
--Disagree.....	504	49.7	149	90.9	353	41.9	2	25.0
--No opinion.....	98	9.7	6	3.7	91	10.8	1	12.5
--No response.....	23	2.3	2	1.2	21	2.5	-	-
(e) Smoking in a work area should be allowed only when all employees using that space agree.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	543	53.5	73	44.5	587	69.6	5	62.5
--Disagree.....	250	24.6	74	45.1	174	20.6	2	25.0
--No opinion.....	68	6.7	10	6.1	57	6.8	1	12.5
--No response.....	52	5.2	7	4.3	29	3.0	-	-
(f) Smoking should be confined to a smoker's private office or specially designated areas.....	1,012	100.0	164	100.0	843	100.0	8	100.0
--Agree.....	792	78.0	86	52.4	701	83.2	5	62.5
--Disagree.....	168	16.6	66	40.2	99	11.7	3	37.5
--No opinion.....	21	2.1	7	4.3	24	2.8	-	-
--No response.....	24	2.4	5	3.0	19	2.3	-	-

Attach-
ment C

QUESTIONS NUMBER 2 AND 3

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(2) Does tobacco smoke, in or around your workplace, cause you any problems?	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	245	24.1	2	1.2	241	28.6	2	25.0
--Yes, occasionally.....	381	37.5	17	10.4	359	42.6	5	62.5
--No or rarely.....	381	37.5	140	86.4	230	27.9	1	12.5
--No response.....	0	.0	-	-	0	.0	-	-
(3) If you answered yes to #2, where and how often do you find tobacco smoke to be a problem?								
(a) Own individual office.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	90	8.9	3	1.8	86	10.2	1	12.5
--Yes, occasionally.....	237	23.3	4	2.4	230	27.3	3	37.5
--No or rarely.....	209	20.6	11	6.7	196	23.3	2	25.0
--No response.....	479	47.2	146	89.0	331	39.3	2	25.0
(b) Word processor or Xerox area.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	111	10.9	1	.6	108	12.8	2	25.0
--Yes, occasionally.....	207	20.4	4	2.4	203	24.1	-	-
--No or rarely.....	198	19.5	13	7.9	181	21.5	4	50.0
--No response.....	459	49.2	146	89.0	351	41.6	2	25.0
(c) Co-workers' office.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	199	19.6	3	1.8	194	23.0	2	25.0
--Yes, occasionally.....	291	28.7	7	4.3	281	33.3	3	37.5
--No or rarely.....	81	8.0	11	6.7	70	8.3	-	-
--No response.....	446	43.7	143	87.2	298	35.3	3	37.5
(d) Reception area.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	140	13.8	3	1.8	136	16.1	1	12.5
--Yes, occasionally.....	210	20.7	1	.6	206	24.4	3	37.5
--No or rarely.....	166	16.4	14	8.5	151	17.9	1	12.5
--No response.....	499	49.2	146	89.0	350	41.5	3	37.5
(e) Hallway.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	110	10.8	3	1.8	107	12.7	-	-
--Yes, occasionally.....	181	17.8	3	1.2	177	21.0	3	37.5
--No or rarely.....	320	31.7	13	7.9	304	36.2	3	37.5
--No response.....	504	49.7	146	89.0	395	47.1	3	37.5
(f) Eating area.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	188	18.6	4	2.4	183	21.9	1	12.5
--Yes, occasionally.....	194	19.1	7	4.3	185	21.9	2	25.0
--No or rarely.....	160	15.8	9	5.5	149	17.7	2	25.0
--No response.....	503	49.6	146	87.8	356	42.2	3	37.5

QUESTIONS NUMBER 2 AND 3 (continued)

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(g) Restroom.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	183	18.0	2	1.2	181	21.5	-	-
--Yes, occasionally.....	203	20.0	2	1.2	197	23.4	4	50.0
--No or rarely.....	141	13.9	15	9.1	125	14.8	1	12.5
--No response.....	488	48.1	140	86.4	340	40.3	3	37.5
(h) Conference room.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	197	18.4	8	4.9	179	21.2	-	-
--Yes, occasionally.....	230	22.7	6	3.7	221	26.2	3	37.5
--No or rarely.....	131	12.9	8	4.9	121	14.4	2	25.0
--No response.....	467	46.0	142	86.6	322	38.2	3	37.5
(i) Elevator.....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	84	8.3	6	3.7	77	9.1	1	12.5
--Yes, occasionally.....	189	18.6	4	2.4	183	21.7	2	25.0
--No or rarely.....	211	20.8	11	6.7	198	23.5	2	25.0
--No response.....	531	52.3	143	87.3	385	45.7	3	37.5
(j) Other (specified).....	L-013	100.0	164	100.0	843	100.0	8	100.0
--Yes, often.....	17	1.7	2	1.2	15	1.8	-	-
--Yes, occasionally.....	19	1.9	-	-	19	2.3	-	-
--No or rarely.....	1	.0	-	-	1	.1	-	-
--No response.....	978	96.4	162	98.8	808	95.8	8	100.0

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QUESTION NUMBER 4

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(4.A) Do you have a condition that tobacco smoke aggravates?	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	426	42.0	15	9.1	406	48.2	5	83.3
--No.....	586	58.0	149	89.0	399	47.2	1	16.7
--No response.....	43	4.2	3	1.9	39	4.6	1	12.5
(a) Allergy/Sinus.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	336	33.1	11	6.7	321	38.1	4	66.7
--No response.....	679	66.9	153	93.3	522	61.9	4	66.7
(b) Heart Disease.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	13	1.3	1	.6	11	1.3	1	16.7
--No response.....	1,002	98.7	163	99.4	832	98.7	7	87.5
(c) Emphysema.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	8	.8	1	.6	5	.6	3	50.0
--No response.....	1,007	99.2	163	99.4	838	99.4	3	50.0
(d) Bronchitis.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	42	4.1	3	1.8	37	4.4	3	50.0
--No response.....	973	95.9	161	98.2	806	95.6	3	50.0
(e) High Blood Pressure.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	51	5.0	1	.6	49	5.8	1	16.7
--No response.....	964	95.0	163	99.4	794	94.2	7	87.5
(f) Migraine Headache.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	77	7.6	3	1.8	72	8.5	2	33.3
--No response.....	938	92.4	161	98.2	771	91.5	4	66.7
(g) Other.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	101g	10.0	3	1.8	95	11.3	3	50.0
--No response.....	914	90.0	161	98.2	748	88.7	3	50.0

a/ Fifty of these indicated eye problems.

QUESTION NUMBER 5

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(5) Do you share an office or work area with one or more other employees?	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	573	56.5	18	10.9	557	66.2	3	50.0
--No.....	432	42.6	73	44.3	359	42.1	4	66.7
--No response.....	10	1.0	3	1.8	6	.7	1	12.5
(a) If yes, are any of these employees smokers?	1,013	100.0	164	100.0	843	100.0	6	100.0
--Yes.....	397	39.1	71	43.3	324	38.4	2	33.3
--No.....	204	20.1	21	12.8	180	21.4	3	50.0
--No response.....	414	40.8	72	43.5	339	40.2	3	50.0

QUESTION NUMBER 6

Response to statement	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(6) Do you currently smoke at work?	1,013	100.0	164	100.0	843	100.0	6	100.0

QUESTIONS NUMBER 7, 8, AND 9

Characteristic	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
(7) Age Group.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Under 30.....	111	10.9	12	7.3	97	11.5	1	16.7
--30-44.....	433	42.7	70	42.7	361	42.8	3	50.0
--45 or older.....	392	38.6	63	38.4	328	38.9	2	33.3
--No response.....	79	7.8	19	11.6	57	6.8	3	50.0
(8) Sex.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--Male.....	470	46.3	74	45.1	394	46.7	2	33.3
--Female.....	509	50.1	77	47.0	432	50.7	3	50.0
--No response.....	34	3.3	13	7.9	22	2.6	1	12.5
(9) Grade or rank.....	1,013	100.0	164	100.0	843	100.0	6	100.0
--GS-1 thru GS-4.....	359	35.4	60	36.6	297	35.2	2	33.3
--GS-5 thru GS-7.....	176	17.3	26	15.9	147	17.4	3	50.0
--GS-8 thru GS-9.....	111	10.9	43	26.2	66	7.9	2	33.3
--Unspecified.....	83	8.2	20	12.2	63	7.5	1	12.5
--No response.....	86	8.5	15	9.1	70	8.3	1	12.5

a/ Includes GS-8 thru 9.

b/ Includes GS-4 thru 7.

c/ Includes GS-3 and higher grades.

QUESTION NUMBER 10

Building Number	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
All buildings.....	1,013	100.0	136	100.0	833	100.0	8	100.0
SA-1.....	76	7.5	15	9.1	61	7.2	-	-
SA-6.....	1	.1	-	-	1	.1	-	-
SA-8.....	51	5.0	9	5.5	42	5.0	-	-
SA-13.....	21	2.1	3	3.0	18	1.9	-	-
SA-12.....	90	8.9	11	6.7	79	9.3	1	12.5
SA-16.....	110	10.8	26	15.9	83	9.8	1	12.5
SA-18.....	94	9.3	8	4.9	86	9.5	-	-
SA-19.....	154	15.2	12	7.3	140	16.6	2	25.0
Main State.....	913	90.7	89	42.1	341	40.5	3	37.5
Unspecified.....	45	4.4	9	5.5	35	4.2	1	12.5

EMPLOYEES' ADDITIONAL COMMENTS ON SMOKING IN THE WORKPLACE, BY CATEGORY

Comment Category	All		Smokers		Nonsmokers		Unknown	
	No.	%	No.	%	No.	%	No.	%
Total comments.....	1,083	100.0	176	100.0	908	100.0	8	100.0
1. Against cigar or pipe smoking.....	35	3.3	-	-	25	3.0	-	-
2. Ventilation problems.....	35	3.2	7	4.0	28	3.1	-	-
3. Negative on questionnaire.....	23	2.1	13	7.4	10	1.1	-	-
4. Violation of current rules.....	28	2.3	-	-	28	3.0	-	-
5. Hood air cleaners/purifiers.....	14	1.3	4	2.3	10	1.1	-	-
6. Help smokers (workshops, etc.).....	6	.5	-	-	6	.7	-	-
7. Fire & safety, equipment damage.....	9	.8	-	-	9	1.0	-	-
8. Other comments.....	311	28.5	42	23.9	266	29.3	3	37.5
9. No comments.....	644	59.0	110	62.5	529	58.3	5	62.5

EMPLOYEE SKEWED WITH DATA FROM TOBACCO SMOKER EXPOSURE

Employee Response	No.		%	
	No.	%	No.	%
Have a condition that tobacco smoke aggravates.....	426	42.0		
Do not have a condition that tobacco smoke aggravates but agree working around tobacco smoke is harmful to one's health.....	402	39.6		
Not included above but find tobacco smoke a problem (often or occasionally) at work.....	19	1.9		
Subtotal.....	847	83.5		
Nonresponder.....	168	16.5		
Total.....	1,015	100.0		

REPORT FOR LIMITED SKEWING

Employee Response	No.		%	
	No.	%	No.	%
Agree on total ban but not on other listed options.....	49	4.8		
Agree on total ban and other listed options ^{a/}	361	33.6		
Disagree on total ban but agree to other listed options ^{b/}	392	36.6		
No opinion on total ban but agree to other listed options ^{b/}	110	10.0		
Disagree with total freedom to smoke but failed to agree with other listed options ^{b/}	26	2.6		
Subtotal.....	938	90.6		
Nonresponder.....	97	9.4		
Total.....	1,035	100.0		

^{a/} Other listed options are in Question No. 1 as "(a) Smoking in a work area should be allowed only when all employees using that space agree"; and
^{b/} "(f) Smoking should be confined to a machine's private office or specially designated areas".

Senator STEVENS. Our last witness for the day is Donald-Gordon Draves, who is a representative of Georgians Against Smoking Pollution.

Good morning, Mr. Draves.

TESTIMONY OF DONALD-GORDON DRAVES, GEORGIANS AGAINST SMOKING POLLUTION; CAVE SPRING, GA

Mr. DRAVES. Good morning. I first of all want to say thank you very much for allowing me to be here today to speak on a very important bill. I thank you very sincerely that you have introduced this bill.

Mr. Chairman and Senators, my name is Donald-Gordon Draves. I am editor of "Clearing the Air," newsletter for GASP, Georgians Against Smoking Pollution. Our group is a nonprofit organization dedicated to nonsmokers' rights and is made up of volunteers who believe that smoking, especially in indoor areas, is an unnecessary source of air pollution that should be limited to the greatest extent possible. Many of our members are respiratorily or cardiovascularly impaired or have other ailments that are worsened by the presence of tobacco or other smoke.

As you know, Georgia is a tobacco-producing State. With that in mind, our GASP group has proposed legislation at the various levels of government in Georgia. There have been successes, but there have been disappointments too.

The speaker of the Georgia House of Representatives seems to pack the house's health and ecology committee with members who are from the southern part of the State. In recent years, it has grown more difficult to get any legislation passed on the topic of smoke in the form of a law, but a few resolutions have been passed; they are nonbinding and only suggest a course of action.

Therefore, we hope that the actions taken this week in the Senate will prove fruitful and produce protection for the nonsmokers in Federal buildings and provide a good example for our own State legislators.

Working on nonsmokers' rights in our State can be frustrating, but some day our legislators may decide that defending the 3,000 to 5,000 tobacco growers at the expense of the nonsmoking majority is unsound thinking. Your actions today may speed that day.

There has been a question on the topic of common courtesy and the need for this legislation.

Common courtesy hasn't worked, period. If common courtesy had worked, would we be here today? No. Would I have driven all the way from Georgia? No. We could stop proposing new laws if there was more common courtesy. We would not need laws forbidding murder, rape, theft, arson, if everyone gave common courtesy to everyone else. As with these other infractions of common courtesy, we also need laws to protect people from the effects of smoke.

Governments have the right to propose and implement laws which protect citizens. But beyond that, governments have a duty or a responsibility to protect people, even from citizens from their own nation. Even though our Government restricts its own powers to dictate to its citizens, it has the power to affect changes that will

make the environment more healthful for people, even at the expense of the polluters.

Whether the polluter is a company with a smoke stack or a smoker with a pipe, the pollution needs to be restricted for the health of those that are downwind from the source.

Being in a room with a smoker is like Los Angeles with an inversion layer: The pollution is trapped and is not carried away by air currents. When we share the same air supply indoors, it is better if there is little pollution, for even a little is too much for some people.

Our Government should be defending those who need defense the most: Those who are already impaired by physical ailments. The smokers have a multibillion dollar industry to defend their practice of self-administration of a highly addictive drug.

We hear frequently about freedom of choice. But usually, it is only referring to the choice of being an active smoker or not. Rarely, if ever, is the topic expanded to include the freedom from smoking. One famous person, initials FDR, pointed out that it is important to have freedom from as well as to have freedom to. Persons who have chosen not to smoke should have the freedom from the smoke of others. There is little freedom if you have chosen not to do something and then you are forced to do it.

If your decision was a conscious choice not to smoke and you are being exposed to smoke at work, home, or in public places, are you truly free?

Therefore, I urge you to pass S. 1440 to protect the health and comfort of the nonsmokers who work or use the buildings of the Federal Government.

I would like to conclude by speaking about a topic which probably hasn't been touched on yet. Besides representing my group here today, I am also presenting information of a personal note. This is because indoor tobacco smoke causes respiratory and cardiovascular problems for me.

In 1980, I was employed by the National Park Service at Mammoth Cave National Park, KY. I was terminated at the end of that summer and not rehired, solely because of the topic that we are discussing here during these hearings. Not only is it appropriate to protect Federal workers from second-hand tobacco smoke, but also medically handicapped persons deserve your special consideration by passage of this legislation.

Thank you.

Senator STEVENS. Thank you very much for taking the trouble to drive all the way up here from Georgia. We appreciate your interest in coming up. You have a powerful personal interest as I understand it from the information you sent us. We appreciate your contribution to our hearing.

Mr. DRAVES. Could I make a remark about the C-rations? My cousin used to acquire C-rations just for the cigarettes. So if you take out the cigarettes, it is possible that less C-rations will be stolen.

Senator STEVENS. That might be true, too. We will look into that in another committee. Thank you very much.

Mr. DRAVES. Thank you.

Senator STEVENS. That is the end of the hearing, and we will be taking the matter up before the subcommittee and full committee soon. Thank you very much.

[Whereupon, at 11:40 a.m., the subcommittee was recessed, subject to the call of the Chair.]

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ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

99TH CONGRESS
1ST SESSION**S. 1440**

To restrict smoking to designated areas in all United States Government buildings.

IN THE SENATE OF THE UNITED STATES

JULY 16, 1985

Mr. STEVENS (for himself, Mr. GOLDWATER, Mr. MURKOWSKI, Mr. HATCH, Mr. PROXMIRE, and Mr. MATSUNAGA) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To restrict smoking to designated areas in all United States Government buildings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Non-Smokers Rights Act
4 of 1985".

5

FINDINGS

6

SEC. 2. The Congress finds that—

7

(1) numerous studies have shown second-hand

8

smoke to be a significant health hazard;

1 (2) recent court decisions recognize an emerging
2 right of employees to work in a smoke-free environ-
3 ment; and

4 (3) smoking results in increased costs to employ-
5 ers and the public in the form of more frequent absen-
6 teeism by employees who smoke and higher costs for
7 health insurance, fire insurance, life insurance, and
8 workers' compensation.

9 UNITED STATES GOVERNMENT BUILDINGS

10 SEC. 3. (a) Within 180 days after the date of enactment
11 of this Act and as provided in subsection (b)—

12 (1) the Administrator of the General Services Ad-
13 ministration shall prescribe and implement such reason-
14 able rules and regulations as may be necessary to des-
15 ignate smoking areas in any building under the juris-
16 diction and control of a department or agency of the
17 United States;

18 (2) the Committee on Rules and Administration of
19 the Senate and the Committee on House Administra-
20 tion of the House of Representatives shall prescribe
21 and implement such reasonable rules and regulations as
22 may be necessary to designate smoking areas in any
23 building under the jurisdiction and control of the Con-
24 gress; and

25 (3) the Administrator of the Administrative Office
26 of the United States Courts shall prescribe and imple-

1 ment such reasonable rules and regulations as may be
2 necessary to designate smoking areas in any building
3 under the jurisdiction and control of the judicial branch
4 of Government.

5 (b)(1) Rules and regulations for United States Govern-
6 ment buildings prescribed pursuant to subsection (a) shall—

7 (A) make reasonable accommodations for the
8 needs of the smokers and nonsmokers who use the
9 Government buildings; and

10 (B) conspicuously display signs in each building
11 that specify the portions of the building in which smok-
12 ing is allowed by law and in which smoking is prohibit-
13 ed by law.

14 (2) A sign required by paragraph (1)(B) shall be at least
15 18 inches wide and 6 inches high, with lettering at least 1.25
16 inches high.

17 (c)(1) Whoever smokes in an area of a United States
18 Government building not designated as a smoking area pur-
19 suant to this section shall be subject to a civil fine of not less
20 than \$50 nor more than \$500.

21 (2) This subsection shall be effective 180 days after the
22 date of enactment of this Act.

ALASKA'S SMOKING LAW

SUMMARY AND SUGGESTIONS



JULY 17, 1984

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ALASKA'S SMOKING LAW

* * *

SUMMARY AND SUGGESTIONS

The 1984 Alaska Legislature found that second-hand smoke is a significant health hazard, and enacted a law (Chapter 34, 1984 Session Laws of Alaska) concerning smoking in public places. A copy of that law is attached for your reference.

Under the new law, effective July 17, 1984, IN CERTAIN PLACES AND VEHICLES, A SMOKER'S PRIVILEGES MUST YIELD TO THE PUBLIC'S RIGHT TO CLEAN AIR.

Whether you are a smoker, a nonsmoker, or the person in charge of a regulated place, flexibility and cooperation will be helpful in determining what will work to achieve compliance with the law in any given facility. Preliminary decisions may need to be modified if it becomes clear that the needs of affected persons are not being adequately met.

Working together with willingness and understanding will help to make the necessary adjustments as painless as possible for all concerned.

A brief summary follows of the places and vehicles covered by the law. You are urged to study the law in its entirety for complete details. Also included here are some suggested guidelines to assist in implementing the law.

WHERE IS SMOKING PROHIBITED?

The law prohibits smoking in:

- (1) elevators
- (2) schools (public and private)
preschools
day care facilities *
- (3) courtrooms
jury rooms
- (4) portions of health care facilities
- (5) state and local government public
meetings or assemblies
- (6) grocery stores
- (7) food service establishments seating 50 or more
(including bars which serve food and seat 50
or more patrons)**

* 7 AAC 50.275(5) defines "day care facility" as a day care center or family day care home ... but does not include any establishment whose primary purpose is educational. "Day care center" is defined as (A) a facility, other than an occupied residence, in which care is regularly provided for any number of children; or (B) an occupied residence in which day care is regularly provided for 11 or more children, counting both children living in the home and children received for day care whether or not they are related to the resident caregiver. "Family day care home" is defined as an occupied residence in which day care is regularly provided for no more than 10 children, some of whom are not related to the resident caregiver.

** After consultation with the Department of Law, it has been determined that "food service establishment" includes bars and taverns that serve food, except food such as potato chips, popcorn, or nuts.

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(8) state and local government facilities, including:

offices
 museums
 concert halls
 gymnasiums

libraries
 theaters
 convention halls
 swimming pools

other places of
 entertainment or
 recreation

other buildings owned,
 leased or operated by
 state or municipality

(9) waiting or boarding areas for public transportation

(10) vehicles of public transportation including:

buses
 ferries
 trains
 taxicabs
 limousines
 some intrastate aircraft

(11) any place of employment posted as nonsmoking

EXCEPTIONS

In nearly all areas listed above, except elevators, specific smoking areas may be designated.

- * Elementary and secondary school students may not have a smoking area in the school or on the grounds.
- * Smoking is allowed in limousines and taxicabs if the driver and all passengers consent.
- * Performers may smoke on stage as part of a theatrical or entertainment production.

SMOKERS' RESPONSIBILITIES AND RIGHTS

If you are a smoker, your main responsibility is that of awareness. Before you light up or move about while smoking, check to see if smoking is prohibited. Since large signs must be conspicuously posted, it should be easy to determine if you are in a smoking-prohibited area.

If you want a smoking area designated, make that request of the person in charge of the facility. That person, however, is not obligated to designate a smoking area. Remember that everyone's right to clean air takes precedence over your right to smoke in these areas. If the person in charge designates a smoking area, that person must make reasonable accommodations for the needs of both smokers and nonsmokers.

NONSMOKERS RIGHTS

The law establishes that your right to clean, smoke-free air supersedes the rights of smokers in certain places. Those areas must be identified by large, conspicuously placed signs. If the person in charge designates a smoking area, reasonable accommodations must be made for your needs. If you are not satisfied with the arrangement, make this known to the person in charge.

RESPONSIBILITIES OF THE PERSON "IN CHARGE"

If you are a person in charge of a place or vehicle covered by this law, you have certain legal obligations. (A person in charge is generally the proprietor, owner, or chief executive officer authorized to generally supervise the place or vehicle, or the agent of that person. If it is difficult to tell who is the person in charge, one moves up the chain of supervision until it is clear.) You may delegate your assignment if the delegate agrees and is clearly identified.

As a person in charge, your first legal obligation is to conspicuously display a sign that reads, "Smoking Prohibited by Law -- Maximum Fine \$50." (Signs are not required in taxicabs and limousines.) The sign must include the international symbol for no smoking, and must be at least 18 inches wide by six inches high, with lettering at least 1.25 inches high. The Department of Environmental Conservation (DEC) will furnish signs upon request.

You may designate a portion (but not all) of the place or vehicle, excepting elevators, limousines, and taxicabs, as smoking areas. If you designate a smoking area, you must identify it with a prescribed sign. These signs are also available from DEC.

If you decide to designate a smoking area, you must then make reasonable accommodations for the needs of smokers and nonsmokers who use the building or vehicle.

"Reasonable accommodations" is a flexible, not an absolute, standard that takes into account varying circumstances. Some suggestions are offered on the following page for your consideration. If no reasonable accommodation can be made, for whatever reason, the nonsmoking designation prevails.

SUGGESTED GUIDELINES

If the person in charge decides to designate a smoking area, that person may wish to use some of the following suggested guidelines to reasonably accommodate nonsmokers and smokers. Since every facility will present different considerations, only general guidelines are given. Common sense will necessarily dictate decisions, absent hard and fast rules.

- To conspicuously display required signs, it is suggested that you place smoking-prohibited signs on or near the entrance doors and in the main lobbies of buildings subject to this law. It should not be necessary to display a sign in every room of such a building.
- It is suggested that all common traffic areas such as hallways, stairways, waiting rooms, and restrooms remain no-smoking areas. (These areas are already restricted in hospitals and other health-care facilities.)
- It is suggested that, where possible, existing walls or barriers be used to separate smoking and no-smoking areas. Floor-to-ceiling walls are not necessary, but barriers should be high enough to prevent smoke circulation.
- Distance between smoking and no-smoking areas is another consideration toward achieving reasonable accommodation. Optimal separation would be a separate, well-ventilated room, but this is not required. The Legislature did not intend that implementation of this law should involve significant expenditures.
- Usually, only one smoking area per room should be designated. A checkerboard of smoking and no-smoking areas should be avoided. Work stations or seating arrangements could be changed for this purpose.
- You may want to use the general proportion of smokers to nonsmokers who work in or frequent the place or vehicle to help you decide the size of smoking areas. If a room or vehicle is small or poorly ventilated, the no-smoking designation should probably prevail. Usually private offices may be designated as smoking areas.
- Mechanical devices and ventilation considerations may be used to help accommodate the needs of smokers and nonsmokers.

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ENFORCEMENT

If you smoke in a no-smoking area, you may be served with a civil complaint or be issued a citation. The fine could range from \$10 to \$50.

If you are the person in charge and you fail to place no-smoking signs, you are subject to a civil complaint or a citation. The fine could range from \$20 to \$300. Each day a violation continues after you have been issued a citation constitutes a separate violation.

If you observe someone smoking in a prohibited area or notice that signs are not posted in a required area, you may report the violation to DEC. You may need to complete an affidavit and agree to appear in small claims court. You may also report the violation to a DEC enforcement officer or to a peace officer, but to issue a citation, a peace officer must witness the violation.

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LAWS OF ALASKA

1984

Source

SCS CSHB 84(Fin) am S

Chapter No.

34

AN ACT

Relating to smoking in public places and vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: April 18, 1984
Actual Effective Date: July 17, 1984

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AN ACT

Relating to smoking in public places and vehicles.

* Section 1. FINDINGS. The legislature finds that:

- (1) numerous studies have shown second-hand smoke to be a significant health hazard;
- (2) recent court decisions recognize an emerging right of employees to work in a smoke-free environment; and
- (3) smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance, and workers' compensation.

* Sec. 2. AS 18.35.300 is repealed and reenacted to read:

Sec. 18.35.300. SMOKING IN CERTAIN VEHICLES AND INDOOR PLACES PROHIBITED. Smoking in any form is a nuisance and a public health hazard and is prohibited in the following vehicles and indoor places, except as otherwise provided by this chapter:

- (1) a vehicle of public transportation and a waiting or boarding area for a vehicle of public transportation, including a bus, ferry vessel, train, limousine for hire, taxicab, or scheduled intrastate aircraft flight when consistent with federal law;
- (2) an elevator;
- (3) a place of employment, a building or other structure, or a portion of them, owned, leased, or operated by the state or a

Chapter 34

political subdivision of the state, including an office, library, museum, theater, concert hall, convention hall, gymnasium, swimming pool, or other place of entertainment or recreation;

(4) a public or private school, pre-school, or day care facility;

(5) a courtroom or jury deliberation room;

(6) a room, chamber, or other place under the control of the state or a political subdivision of the state while a public meeting or public assembly is in progress;

(7) a patients' or visitors' waiting room or restroom of a public or private laboratory or office associated with dental care, health care, or the healing arts, and a waiting room, restroom, lobby, or hallway of a public or private hospital, nursing home, rest home, or other health care institution or facility;

(8) a food service establishment that has a seating capacity of at least 30 persons;

(9) a grocery store or other store maintained primarily for the retail sale of food products; and

(10) a place of employment in which the owner, manager, proprietor, or other person who has control of the premises posts a sign stating that smoking is prohibited by law.

* Sec. 3. AS 18.35.310 is repealed and reenacted to read:

Sec. 18.35.310. EXEMPTIONS. The prohibition set out in AS 18.35.300 does not apply to

(1) a portion of a place or vehicle that is designated as a smoking section under AS 18.35.320;

(2) a limousine for hire or taxicab, if the driver consents and the driver ascertains that all passengers consent to smoking in the vehicle;

(3) smoking by performers on the stage as part of a theatrical or entertainment production.

* Sec. 4. AS 18.35.320 is repealed and reenacted to read:

Sec. 18.35.320. DESIGNATION OF SMOKING SECTIONS. (a) A person in charge of an indoor place or vehicle of public transportation described in AS 18.35.300 may designate portions of the place or vehicle as smoking sections. For purposes of this section, "vehicle of public transportation" does not include a taxicab or limousine for hire, and "indoor place" does not include an elevator.

(b) The person who chairs the Rules Committee in a house of the legislature is responsible for the designation of smoking sections under this section in the legislative offices, committee rooms, and other places under the control of that house. The authority to designate a smoking section may not be used to impede the work of a conference committee.

(c) A person who designates a smoking section under this section shall make reasonable accommodations for the needs of the smokers and nonsmokers who use the place or vehicle.

(d) Notwithstanding any other provision in this chapter, a smoking section may not be designated under this section for students on the grounds of or in an elementary or secondary school, indoors or outdoors.

* Sec. 5. AS 18.35.330 is repealed and reenacted to read:

Sec. 18.35.330. DISPLAY OF SMOKING AND NO SMOKING SIGNS. (a) A person in charge of a place or vehicle described in AS 18.35.300, except a limousine for hire or taxicab, shall conspicuously display in the place or vehicle a sign that reads "Smoking Prohibited by Law - Maximum Fine \$50" and that includes the international symbol for no smoking.

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(b) In a place or vehicle in which a smoking section has been designated under AS 18.35.320, the person in charge of the place or vehicle shall conspicuously display signs that specify the portions of the place or vehicle in which smoking is allowed by law and in which smoking is prohibited by law.

(c) A sign required by this section must be at least 18 inches wide and six inches high, with lettering at least 1.25 inches high.

(d) The department shall furnish signs required under this section to a person who requests them with the intention of displaying them.

* Sec. 6. AS 18.35.340 is repealed and reenacted to read:

Sec. 18.35.340. CIVIL COMPLAINTS; PENALTIES. (a) The commissioner shall develop and maintain a procedure for processing reports of violations of AS 18.35.300 and 18.35.330 or of a regulation adopted under AS 18.35.360.

(b) If, after investigating a report made under this section, the commissioner determines that a violation has occurred, (1) the commissioner may file a civil complaint in the district court to enforce the provisions of AS 18.35.300 - 18.35.365 or of a regulation adopted under AS 18.35.360; or (2) an employee of the department designated by the commissioner to enforce the provisions of AS 18.35.300 - 18.35.365 may issue a citation under AS 18.35.341(b). If an employee of the department issues a citation, the violation shall be processed and disposed of under AS 18.35.341.

(c) A person who violates AS 18.35.300 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not less than \$10 nor more than \$50. A person who violates AS 18.35.330 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of

not less than \$20 nor more than \$300. Each day a violation of AS 18.35.330 continues after a civil complaint for the violation has been filed and served on the defendant constitutes a separate violation.

(d) The department may provide for the payment of civil fines under this section by mail.

* Sec. 7. AS 18.35 is amended by adding new sections to read:

Sec. 18.35.341. CITATIONS; PENALTY. (a) A peace officer may issue a citation for a violation of AS 18.35.300 committed in the officer's presence or for a violation of AS 18.35.330. The provisions of AS 12.25.180(b) and 12.25.190 - 12.25.230 apply to the issuance of a citation under this subsection.

(b) An employee of the department designated by the commissioner to enforce the provisions of AS 18.35.300 - 18.35.365 may issue a citation for a violation of AS 18.35.300 or 18.35.330 regardless of whether the violation was committed in the employee's presence. A citation issued under this subsection shall be in the same form and shall be processed in the same manner as a citation issued by a peace officer under (a) of this section. An employee of the department may not arrest a person for a violation of AS 18.35.300 or 18.35.330.

(c) A person who violates AS 18.35.300 or 18.35.330 is guilty of a violation as defined in AS 11.81.900(b)(56) and upon conviction is punishable by a fine of not less than \$10 nor more than \$50 for a violation of AS 18.35.300 and by a fine of not less than \$20 nor more than \$300 for a violation of AS 18.35.330. Each day a violation of AS 18.35.330 continues after a citation for the violation has been issued constitutes a separate violation.

(d) The supreme court shall establish a schedule of bail amounts for violations of AS 18.35.300 and 18.35.330, but in no event may the bail amount exceed the maximum fine that may be imposed for the

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violation under (c) of this section. The bail amount for a violation shall appear on the citation.

(e) A person cited for a violation under this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed

(1) the amount of bail indicated on the citation for that violation; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(f) When bail has been forfeited under (e) of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail shall provide the violator with a receipt stating that fact.

(g) If the person cited fails to pay the bail amount established under (d) of this section or to appear in court as required, the citation is considered a summons for a misdemeanor.

Sec. 18.35.342. MULTIPLE FINES PROHIBITED. A person may not be fined more than once for each violation of AS 18.35.300 or 18.35.330.

Sec. 18.35.343. INJUNCTIONS. The commissioner or any affected party may institute an action in the superior court to enjoin repeated violations of AS 18.35.300 or 18.35.330 or of a regulation adopted under AS 18.35.360.

* Sec. 8. AS 18.35.350 is amended to read:

Sec. 18.35.350. ENFORCEMENT AUTHORITY. The commissioner [OF ENVIRONMENTAL CONSERVATION] or the commissioner's [HIS] designee is responsible for enforcing the provisions of AS 18.35.300 - 18.35.365 [AS 18.35.300 - 18.35.340] and the regulations adopted under

AS 18.35.360. This section does not limit the authority of peace officers.

- * Sec. 9. AS 18.35 is amended by adding a new section to read:

Sec. 18.35.355. PUBLIC EDUCATION. The commissioner shall take appropriate measures to inform the public of the provisions of AS 18.-35.300 - 18.35.365.

- * Sec. 10. AS 18.35.360 is repealed.

- * Sec. 11. AS 18.35 is amended by adding a new section to read:

Sec. 18.35.365. DEFINITIONS. In AS 18.35.300 - 18.35.365,

(1) "commissioner" means commissioner of environmental conservation;

(2) "department" means the Department of Environmental Conservation.

- * Sec. 12. AS 12.25.190(c) is amended to read:

(c) The person cited for the crime shall give a [HIS] written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations under AS 28.05.151 or a citation issued under AS 18.35.341.

- * Sec. 13. 18 AAC 55.060 is annulled.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ANCHORAGESeafood & Animal Industries
272-1561

Post Office Mail)
(333 W. 4th Avenue,
Mail: P.O. Box 10-4240
Anchorage, AK 99510-4240

Southcentral Regional Office

274-2533
437 E Street, Suite 200
Anchorage, AK 99501

DILLINGHAM

843-2307
(Sifeof Building)
Pouch A
Dillingham, AK 99576

DUTCH HARBOR

Unalaska Office
581-1681
(Unisea Mall)
Mail: P.O. Box 462
Dutch Harbor, AK 99692

FAIRBANKS

Northern Regional Office
452-1714
(St. Off. Bldg., 675 7th Ave.)
Mail: Pouch 1601
Fairbanks, AK 99707

City Sanitation Office

452-1881
410 Cushman Street
Fairbanks, AK 99701

JUNEAUSoutheastern Regional Office

789-3151
(9000) Old Glacier Highway
at Jordan Square)
Mail: P.O. Box 2420
Juneau, AK 99803

Central Office

(3200 Hospital Drive)
Mail: Pouch O
Juneau, AK 99811

JUNEAU, Con'te

Douglas Laboratory
364-2155
(Mayflower Building,
750 St. Ann's Avenue
Douglas, AK 99824)
Mail: Pouch "OL"
Juneau, AK 99811

KETCHIKAN

District Office
225-6200
(Room 203, State Office Bldg.
415 Main Street)
Ketchikan, AK 99901

KODIAK

District Office
486-3350
(Griffin Memorial Bldg.)
Mail: P.O. Box 515
Kodiak, AK 99615

NOME

District Office
443-2600
(State Office Building)
Mail: Box 1815
Nome, AK 99762

PALMER

Palmer Laboratory
745-3236
(Sims Bldg., 510 S. Alaska)
Mail: P.O. Box 1080
Palmer, AK 99645

Pesticide Control Office

745-PEST
(Palmer Business Plaza,
Corner of S. Bailey &
W. Phelia Streets)
Mail: P.O. Box 2309
Palmer, AK 99645

SITKA

District Office
747-8614
(Sitka Professional Bldg.
at 202 Lake St., Room 206-A)
Mail: P.O. Box 540
Sitka, AK 99835

SOLDOTNA

District Office
262-5210
(Blazy Hall)
Mail: P.O. Box 1207
Soldotna, AK 99669

TOK

District Office
883-4581
(Visitor Center)
Mail: P.O. Box 186
Tok, AK 99780

VALDEZ

District Office
835-4498
(Court and Office Bldg.)
Mail: Drawer 1709
Valdez, AK 99686

WASILLA

District Office
376-5038
(Mile 4 1/2, Parks Highway)
Mail: P.O. Box 1064
Wasilla, AK 99687

TO: Commissioners, Heads of Boards and Commissions

FROM: Gary Miller, Chairman, Labor Management Committee on Smoking

SUBJECT: Recommended Policy and Guidelines

As you are aware, AS 18.35 became effective July 17, 1984. Prior to the dissemination of guidelines concerning the law's intent and application, commissioners and other agency heads developed policies implementing the statute as of that date. The policies established varied significantly.

Numerous complaints arose regarding the initial policies. Representatives of the State and the Alaska Public Employees Association agreed to establish a joint labor-management committee composed of six members, three appointed by the State, three appointed by APEA. The Committee was charged with the responsibility of identifying specific problems and recommending policy and guidelines for the consistent and equitable implementation of AS 18.35 statewide.

The Committee unanimously agreed that the major identifiable problem is the substantial inconsistency between agency policies, particularly in those facilities which are shared by employees of more than one department. For example, two departments sharing a facility - or two divisions within the same department - may have significantly different smoking rules. In one case, employees are not allowed to smoke at all, while in another, adjacent desks are designated smoking or nonsmoking depending on the preferences of the individual employees. This situation is not only confusing to employees and inequitable by its nature, but has a demonstrable effect on employee morale and productivity. Consequently, by majority vote the Committee has drafted and recommends the attached policy and set of guidelines for designating smoking and nonsmoking areas designed to achieve consistency and equity statewide.

New difficulties may arise due to changes in the work force or as a result of the implementation of the Committee's proposal in order to provide a neutral method to resolve disputes uniformly

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throughout the State. The Committee has established three regional subcommittees (Southcentral, Northern, and Southeastern) the duties of which will be to investigate and make recommendations to the Committee about specific problems.

The matter of tobacco smoke abatement is something in which all state officials must take a leadership role. As a state official, you should assume responsibility for advocacy in this issue. The Committee strongly recommends that you adopt the proposed policy and guidelines. In doing so, you will make a significant contribution to insure that the State guarantees an equitable and consistent policy toward its employees, one which recognizes the respective rights of smokers and nonsmokers.

APPENDIX A

Problems brought to the attention of the Committee on smoking:

1. Inconsistent policies are implemented within departments.
2. Multiple departments within a single building have different policies.
3. Half wall partitions are not a solution to smoke containment.
4. Private offices designated as group smoking areas may be inadequate. If in use as a smoking area by coworkers, the office occupants work may be disrupted; alternatively the area may not always be available to other smokers in the area.
5. Upper management personnel often have private offices which give them choices others don't have in establishing individual smoking work stations.
6. Department of Environmental Conservation guidelines are not being followed, notably with respect to "checkerboarding" and designating public places such as restrooms as smoking areas.
7. Designers of new State Office buildings should take smoking laws and this Committee's proposed policy into account when designing a building.
8. There is an inconsistency in provided for smokers and non-smokers, such as lunch and lounge facilities.
9. The practice of permitting numerous short breaks for smokers in lieu of the contractually allowed 15 minute breaks is difficult to enforce and can negatively impact productivity.
10. In some cases, smokers have received no accommodations nor does there appear to have been serious attempt to provide any.
11. Delegation of the authority to designate smoking areas ("Person in charge") to relatively low levels in agencies has resulted in inconsistencies and inequities.
12. Smokers have found that restrictions on smoking have affected their work productivity.

APPENDIX B

LIST OF SMOKING COMMITTEE MEMBERS,
ALTERNATES AND STAFF ASSISTANTS

STATE COMMITTEE:

Ms. Lynda McCurry (State)
Department of Labor
P.O. Box 1149
Juneau, Alaska 99811

Mr. Roger Thayer (State)
Department of Transportation
Pouch 2
Juneau, Alaska 99811

Ms. Kit Ballentine (State)
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811

Mr. Gary Miller (APEA)
Department of Labor
P.O. Box 2463
Juneau, Alaska 99803

Mr. Frank Narusch (APEA)
Department of Transportation/Public Facilities
3281 Montclair
Anchorage, Alaska 99503

Ms. Betty Rhymes (APEA)
Department of Labor
SR Box 40484
Fairbanks, Alaska 99701

Ms. Gini Thomas (Labor Relations Staff)
Department of Administration
Pouch C
Juneau, Alaska 99811

Ms. Dianne Corso (APEA Staff)
Alaska Public Employees Association
210 Ferry Way, Suite 200
Juneau, Alaska 99801

SOUTHEAST REGIONAL COMMITTEE:

Ms. Kathy Gitkov (State)
Department of Environmental Conservation
P.O. Box 2420
Juneau, Alaska 99811

Mr. Chuck Freymueller (State)
Department of Transportation & Public Facilities
P.O. Box 3-1000
Juneau, Alaska 99811

Mr. Fran Podmolik (State)
Department of Administration
Pouch C-0201
Juneau, Alaska 99811

Ms. Gini Thomas (Labor Relations Staff)
Department of Administration
Pouch C
Juneau, Alaska 99811

Mr. Dan Coon (APEA)
Department of Revenue
Box 3-000 #135
Juneau, Alaska 99801

Ms. Rosemary Gage (APEA)
Department of Environmental Conservation
Box 556
Sitka, Alaska 99835

Ms. Stacy Goade (APEA)
Department of Education
2154-C Lawson Creek Rd.
Douglas, Alaska 99824

Ms. Dianne Corso (APEA Staff)
Alaska Public Employees Association
210 Ferry Way, Suite 200
Juneau, Alaska 99801

SOUTHCENTRAL REGIONAL COMMITTEE:

Mr. Jim Allen (State)
Department of Environmental Conservation
437 "E" St., Suite 200
Anchorage, Alaska 99501

Ms. Sue Ower-Doggett (State)
Department of Natural Resources
3601 "C" Street
Anchorage, Alaska 99503

Mr. Bill Blyth (State)
Department of Labor
3301 Eagle St., Suite 303
Anchorage, Alaska 99510

Mr. Corey Willis (State Alternate)
Department of Environmental Conservation
437 "E" St., Suite 200
Anchorage, Alaska 99501

Ms. Phyllis Schmidt (State Alternate)
Department of Administration
Pouch C
Juneau, Alaska 99811

Mr. Elmer Lenard (AEPA)
Department of Corrections
Box 1571
Palmer, Alaska 99645

Mr. Audree Frey (AEPA)
Department of Labor
3301 Eagle Street
Anchorage, Alaska 99503

Mr. John Yarbor (AEPA)
Department of Corrections
Box 671073
Chugiak, Alaska 99567

Mr. Joel Summers (APEA)
Alaska Public Employees Association
833 Gambell Street
Anchorage, Alaska 99501

NORTHERN REGIONAL COMMITTEE:

Ms. Nancy Napolilli (State)
Department of Environmental Conservation
675 7th St. Stn. J
Fairbanks, Alaska 99707

Ms. Caroline Venusti (State)
Department of Transportation
2301 Peger Road
Fairbanks, Alaska 99701

Mr. Dave Otto (State)
Department of Administration
675 7th Ave. Stn. J
Fairbanks, Alaska 99701

Ms. Kathy Hoosier (APEA)
Department of Labor
P.O. Box 60563
Fairbanks, Alaska 99706

Mr. Bill Newman (APEA)
Department of Natural Resources
P.O. Box 2415
Fairbanks, Alaska 99707

Mr. Floy MacPhee (APEA)
Department of Social and Health Services
1100 Gilmore Trail
Fairbanks, Alaska 99701

Mr. Bruce Senkow (APEA Staff)
Alaska Public Employees Association
825 - D College Road
Fairbanks, Alaska 99701

RECOMMENDED POLICY REGARDING SMOKING IN STATE FACILITIES

Prepared by: Labor Management Committee on Smoking

Date: August 28, 1985

PURPOSE: To provide a consistent and reasonable policy regarding smoking in State owned, leased or operated facilities occupied by State employees.

DISCUSSION: The work of the State must be accomplished in a productive and efficient manner. Accommodations for smokers and nonsmokers at the work site shall be addressed as equitably as possible. Reasonable and consistent policy throughout the department is essential, as is statewide consistency, particularly given that many facilities are shared by several agencies. Cooperation and courtesy are needed from both smokers and nonsmokers.

AUTHORITY: AS 18.35

DISTRIBUTION:

(It is recommended that the smoking policy adopted by a given department be included in its policy and procedure manuals and be posted on bulletin boards or be made otherwise available at all worksites.)

POLICY:

- I. All entrances to State owned, leased or operated facilities (hereinafter referred to as "facilities") shall be posted with a notice indicating that smoking is prohibited except in designated areas.
- II. A smoking area(s) will be designated within each facility wherever reasonably practical. Such areas shall include appropriate furnishings, heat, etc., comparable to those in

nonsmoking areas. Smoking areas shall be properly vented either through direct air exchange to the outside or commercial "smoke eater" devices.

- III. All meetings and conferences shall be nonsmoking. These shall include, but not limited to, workshops, seminars, conferences, study groups, classes, etc. Prior to the meeting or conference, the room shall be posted as nonsmoking and it shall be announced at the beginning of each meeting or conference that the meeting is nonsmoking. Attendees will be asked to extinguish any lighted smoking materials.
- IV. Employees shall not smoke in any area open to general public access, such as reception areas, information and ticket counters, etc. These areas shall be posted as nonsmoking. Visitors with lighted smoking material will be advised that they are in nonsmoking area.
- V. Lighted smoking materials such as cigars, pipes and cigarettes shall not be carried outside the designated smoking areas.
- VI. Smoking shall be prohibited in the following areas:
 - A. Elevators (Prohibited by A.S. 18.35.300)
 - B. Stair wells, halls and vestibules
 - C. All conference rooms in use for conferences, workshops, etc., as defined in III above
 - D. Reception areas
 - E. Public libraries
 - F. Lobbies, except for designated areas
 - G. Restrooms
 - H. All other areas designated as nonsmoking
- VII. Work areas are designated as nonsmoking except that Division Directors shall designate smoking areas in accord with the following guidelines wherever reasonably practical. Accommodations are to be made for smokers in all circumstances within the confines of the law. The Commissioner will be responsible for ensuring consistency of divisional policies.
 - A. Permissible accommodations in priority order shall be as follows:

1. Smoking room of adequate size vented to the outside with amenities comparable to those in the nonsmoking areas.
2. Smoking room not vented to the outside but completely separated from other areas of the work place. The room shall be of adequate size with amenities comparable to those in the nonsmoking area.

Note: "Smoking rooms" in 1 and 2 above are defined as rooms with walls to the ceiling and a door.

3. Physical separation of smokers and nonsmokers to the maximum degree possible within the work area. Smoke reduction equipment shall be provided by the Employer. Air flow patterns should be considered "Checkerboarding" (designating alternating desks smoking and nonsmoking) is prohibited.
4. Physical separation of smokers and nonsmokers to the maximum degree possible within the work area without smoke reduction equipment in place. Air flow patterns should be considered. "Checkerboarding" is prohibited.

- B. Division Directors shall demonstrate in writing to the Commissioner that each of the previous options has been considered in priority order and has been found to be unworkable for specific documented reasons before a succeeding option is implemented. The Director's written statement shall be posted or otherwise made available to employees within the affected work areas.
- C. The presence in a work area of an employee with a medical condition certified to be aggravated by smoke may be sufficient reason to designate the entire area nonsmoking. The Division Director may require a second opinion, the costs of which will be borne by the Employer.
- D. Smoking may be permitted in a private office, defined as an office with walls to the ceiling and a door, occupied by one person.

VIII. It is recommended that supervisors interviewing all potential employees explain the smoking policy during the interviewing process.

IX. Whenever possible, disputes should be resolved at the

worksite. In order to do so, the employee(s) must present the complaint to their immediate supervisor. In cases involving General Government or Supervisory Unit employees in which no satisfactory resolution is reached, the employee(s) may submit a written complaint to the Labor Management Committee on Smoking through APEA or the Division of Labor Relations. The Labor Management Committee on Smoking will consider the complaint and make a recommendation for disposition of the dispute to the Commissioner.

STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION FIELD DIRECTIVE	Order No. 2932 Effective	Page 1 of 6
SUBJECT: Smoking in Public Places and Vehicles Reference: AS 18.35	March 1, 1985 Supercedes Order No. _____ Dated _____ Issued by <i>[Signature]</i> Joe Cladouhos, Director Division of Environmental Health Commissioner <i>[Signature]</i> Bill Ross Department Contact is Kit Ballentine 465-2628	

The 1984 Legislature found that second-hand smoke represents a significant health hazard, that employees have a right to work in a smoke-free environment and that smoking results in increased costs to employers and the public. AS 18.35 (Relating to Smoking in Public Places and Vehicles) was enacted to recognize that a smoker's rights must yield to everyone's rights to clean air.

Prior to February 1, 1985, DEH staff involvement in implementation and enforcement of the "Smoking in Public Places" law was limited primarily to portions of the law pertaining to regulated public facilities. Following Departmental reorganization, all activities related to AS 18.35 were assigned to DEH. The purpose of this field directive is to outline Division policy and procedures, and provide guidance concerning full implementation and enforcement of AS 18.35.

DEH involvement with the "Smoking in Public Places" law will focus on the following five objectives:

1. EDUCATE THE GENERAL PUBLIC. Our primary role is to provide information to the public regarding intent and provisions of the law, explain DEC guidelines, and recommend corrective actions and methods to comply with the legal requirements.
2. INFORM AFFECTED BUSINESS OPERATORS AND "PERSONS IN CHARGE" REGARDING THEIR LEGAL OBLIGATION TO DISPLAY SIGNS AND TO REASONABLY ACCOMMODATE NON-SMOKERS AND SMOKERS. We will notify the person in charge if signs are required, offer signs, and record any failure to post required signs on the inspection report. Verification of required posting in public facilities under inspection will be made during each inspection.
3. DISTRIBUTE SIGNS. DEC is charged with provision of signs as described in AS 18.35. However, this does not prohibit a person in charge of a regulated facility from providing their own signs if signs meet the requirements outlined in AS 18.35.330. A supply of signs will be available during inspections to assure that persons in charge can be provided with signs as needed.
4. PROVIDE GUIDELINES WHICH EXPLAIN AND INTERPRET THE LAW. We have an excellent "Summary and Suggestions" public information brochure available.

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They were designed to foster a willingness on the part of smokers and non-smokers to work together and make necessary adjustments. Sanitarians will explain the provisions of the law and guidelines.

5. PROVIDE FAIR AND CONSISTENT ENFORCEMENT. Public education and awareness will be stressed in achieving compliance with the law, expecting that smokers will be cognizant of the law and courteous about their habit. Enforcement action may be required in specific circumstances where educational efforts have not resulted in compliance.

The law creates the following four categories of smoking and non-smoking areas:

1. Selected indoor places and vehicles where no smoking is the rule and requires employers to accommodate nonsmokers who enter the work area in these specified areas (places and vehicles listed in AS 18.35.300 (1) - (9);
2. Designated smoking areas where the Legislature has declared smoking is permitted "subject to common law and common courtesy".
3. Administrative nonsmoking areas, or areas where smoking is allowed by statute but where people in charge have decided that smoking should be banned and post signs to that effect (private businesses, AS 18.35.300(10);
4. Working areas where smoking is prohibited but where limited smoking may be permitted if nonsmokers are accommodated (AS 18.35.320, designated smoking areas in state offices).

As indicated above, nonsmoking is the rule in indoor places or vehicles listed in AS 18.35.300. However, AS 18.35.320(a) permits designation of portions of some indoor places and some vehicles of transportation as smoking sections by the person in charge. If reasonable accommodations cannot be reached, for whatever reason, then the no-smoking designation prevails.

A "person in charge" is generally an owner, proprietor, executive officer, or supervisor authorized to generally supervise the place or vehicle, or the agent of that person.

"Reasonable accommodations" is a flexible standard that takes into account varying circumstances, for which DEC has provided suggested guidelines.

Statutory responsibilities assigned to DEC are the following:

1. Cite person in charge of places or vehicles, designated in AS 18.35.300, for failure to post required no-smoking or smoking area signs.
2. Cite person for smoking in a designated non-smoking area.
3. Supply designated no-smoking or smoking area signs.
4. Provide appropriate public education and develop public awareness regarding provisions of the law.

With the repeal of AS 18.35.360, DEC's authority to promulgate implementing regulations is limited primarily to writing guidelines and interpretations on implementation of statutes. Therefore, suggested guidelines represent recommendations only and cannot be enforced. Neither does DEC have the authority to evaluate a given place or vehicle and decide what constitutes "reasonable accommodations." However, DEC can provide recommendations by which the "person in charge" can make the ultimate decision.

When requests for information or interpretation of the law are received, provide as much information as possible. If a specific interpretation of the law is requested which is not clearly addressed in the law, or for which an interpretation does not exist, then forward the request. Forward the interpretation request to the Environmental Conservation Supervisor for research and/or interpretation and indicate to the requestor that you will provide an answer as soon as possible. DO NOT MAKE AN INTERPRETATION on your own as it may not be consistent with other decisions or with the law. A list of interpretations which have already been researched is attached for reference.

When complaints are received, the following actions will be taken:

1. All complaints and requests regarding the smoking law will be documented on the attached record. Obtain details of the complaint and determine the exact nature of the complaint (e.g. no signs posted, smoking in a no-smoking area, or "unreasonable accommodations"). Log details of the investigation and/or enforcement activity on the reverse side of the record.
2. If the complaint is within the regulatory authority of DEC, then determine whether the complainant has attempted to resolve the alleged violation with the offending party. The complainant should be encouraged to discuss the complaint with the other party, utilizing enforcement action only as a last resort. If the complaint can be resolved by DEC personnel (e.g. no signs posted), then no formal complaint should be filed, but DEC personnel should follow up on the complaint, advising the person in charge of their legal responsibilities, and should provide the required signs as necessary.
3. If during the course of an inspection or investigation of complaint, it is observed that an owner or person in charge has failed to post the required signs, then sanitarian will provide the required signs and note the violation on the inspection report for the first offense. If subsequent offenses occur and compliance is not achieved, then additional enforcement action will be taken (issuance of Uniform Citation with Bailment Schedule, or Small Claims Court Action).
4. When the complainant has attempted to reason with an alleged offender without result, such as repeated smoking in a non-smoking area, then the complainant should be advised that a formal complaint can be filed with the Department. When a formal complaint is received, action on the complaint will commence within 48 hours of receipt. (See the attached procedure for processing a formal complaint).
5. Requests to issue citations at the site of an alleged offense will be handled in the following manner:
 - a. Determine whether alleged offense is a first time violation or is a repeat violation in either the same facility or by the same alleged offender.
 - b. Because of limited manpower available and public health program priorities, immediate site investigations with direct citation of violator will be limited to repeat offenders or facilities with repeat violations which have not been resolved by the "person in charge".

FIRST TIME OFFENSE. Request that the complainant attempt to resolve the violation by making a verbal request to the alleged offender. If the alleged offender refuses to comply, then request that the complainant make a formal complaint and allow DEC to handle the complaint on the complainant's behalf through issuance of a Uniform Citation.

REPEATED OFFENSES OR VIOLATORS If a "person in charge" permits the continued violation of provisions of AS 18.35.360 or AS 18.35.330 or a person continues to commit a violation of these provisions, then immediate field investigation of a complaint may be made in an attempt to successfully resolve repeat offenses. If the investigation confirms a violation, a Uniform Citation will be issued.

6. When complaints are received regarding "reasonable accommodations", DEC regulatory authority should be clearly explained and guidelines should be referenced. Advise the complainant that the ultimate decision of "reasonable accommodations" lies with the "person in charge", and therefore complaints regarding unsatisfactory accommodations should be addressed by that person. Department personnel should not act as arbitrators in disputes regarding "reasonable accommodations", but should explain that in designated indoor places and vehicles no-smoking is the rule; that the "person in charge" must provide "reasonable accommodations" for smokers and nonsmokers; and that if no agreement can be reached, the no-smoking designation applies.

ENFORCEMENT ACTIONS ASSOCIATED WITH PROCESSING A FORMAL COMPLAINT

The following two enforcement actions are available for obtaining compliance with provisions of AS 18.35:

1. Issue a Uniform Citation with Bailment to alleged violator.
(to be used with initial offenses)
- OR
2. Obtain a written affidavit and file in Small Claims Court.
(to be used with repeat offenses).

In order for a complaint to be filed, an alleged offender must be positively identified either by complainant, sanitarian or witnesses who are willing to testify should court action be required.

DEH staff should document any investigation of an alleged violation following the procedures outlined in Section A of the "General Enforcement Procedures" of the DEC Enforcement Manual.

Issuing a Uniform Citation with Bailment

Pursuant to the requirements of AS 18.35.34(d), the Alaska Supreme Court has established the following schedule of bail amounts for violations of AS 18.35.300 (smoking in a vehicle or indoor place in which smoking is prohibited) and AS 18.35.330 (failure to display smoking or no smoking signs):

AS 18.35.300 Smoking in a vehicle or indoor place
in which smoking is prohibited.....\$10

AS 18.35.330 Failure to display smoking or no smoking sign.....\$25
(Effective July 17, 1984)

The procedures used for issuance of a Uniform Citation with Bailment are the same as issuance of a Uniform Summons (without bailment) except that the citations are processed through Traffic Court. The following procedures should be used in issuing a Uniform Citation with Bailment:

1. Establish an agreement with the local court (usually the magistrate) regarding assignment of arraignment times. Normally a specific day of the week or month will be designated as an arraignment day for smoking violations. A specific number of days from the occurrence of the offense could also be requested (i.e., 20 days). Arrangements should be made which permit the DEC representative to assign a court date when issuing the Uniform Citation without having to contact the court.
2. Complete the Uniform Citation with Bailment making sure to complete all portions of the Citation including completion of the Bailment amount at the bottom front side of the Citation.
2. Obtain signature of alleged violator on the Citation.
3. File copies one and two of the Citation with the local Clerk of the Court and advise of assigned court date.
4. Establish an enforcement file complete with DEC Violation Number.
(Refer to DEC Enforcement Manual for Violation Number assignment)

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Filing a Small Claims Action

The procedures used are the same as other Small Claims actions except that DEH staff will assist the general public in processing of complaints, providing necessary technical resources to process a claim, and appearing with complainant in court. Necessary Small Claims Court forms are attached. Requests for assistance from the general public should be handled as follows:

1. The claimant should complete a "Statement/Affidavit" form outlining in as much detail as possible, the nature of the alleged violation (in the presence of the DEC staff person receiving the complaint) and then sign the "Agreement to Testify" form.
2. If, upon review of the circumstances surrounding the alleged violation, the ADEC staff person is satisfied that an actual violation has occurred, the complainant will be assisted in filling out the following small claims court forms: "Complaint", "Affidavit" and "Summons" which pertain to violations of AS 18.35. The complaint form is slightly different from the normal Small Claims complaint form because it specifies violations of AS 18.35, which carry penalties specified under AS 18.35.340.
3. File Small Claims Enforcement Forms with the Court following procedures outlined in the Department Procedures Manual.

Route to:
1. Director
2. ECS
3. Sanitarian Superv.
4. Billie Trent
Request Interpretat
☐ by Central Office

RECORD OF CONTACT REGARDING SMOKING PROGRAM

YOUR NAME _____ DATE OF CONTACT _____ 198__

NAME OF PERSON WHO CONTACTED YOU/YOU CONTACTED _____

ADDRESS _____ PHONE _____

NATURE OF REQUEST OR COMPLAINT _____

RESPONSE _____

FOLLOWUP ACTION REQUIRED _____

FOLLOWUP ACTION COMPLETED/TO BE COMPLETED BY _____

SEE REVERSE FOR DETAILS OF INVESTIGATION AND/OR ENFORCEMENT ACTION TAKEN.

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UNIFORM CITATION
Department of Environmental Conservation

CASE No. _____ BAIL FILED AT \$ _____

JUDICIAL DISTRICT No. S 707851

STATE OF ALASKA

IN THE DISTRICT COURT AT _____

The undersigned, being duly sworn, upon oath, deposes and says:

ON _____ THE _____ DAY OF _____ 19____ AT _____ A.M.

NAME _____ LAST _____ FIRST _____ MIDDLE _____

STREET _____

CITY STATE _____ PHONE _____

AGE _____ BIRTH DATE _____ RACE _____ SEX _____ HT _____ WT _____

EYES _____ HAIR _____ SOCIAL SECURITY NO. _____

PLACE OF EMPLOYMENT _____

AT OR NEAR LOCATION _____

DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE IN THE _____ JUDICIAL DISTRICT AND STATE OF ALASKA:

TO WIT:

_____ WHICH IS IN VIOLATION OF

ALASKA [] STATUTE _____

ALASKA [] REGULATION _____

EVIDENCE RECEIPT _____

SMOKING CITATIONS

— ATTENTION —

If you have received a citation for smoking in a prohibited place in violation of AS 16.35.300 or for not placing the proper "no-smoking" or "designated smoking area" sign in violation of AS 16.35.130 the following courses of action are available to you. You may appear in court for arraignment at the time and place provided and enter your plea OR you may give up your right to appear for arraignment. If you give up your right to appear for arraignment, then you must sign either Section A or B and prepare the signed citation in person or in the presence of the clerk of the court, along with the amount of bail shown below within 15 days from the date of issuance of this citation.

WAIVER OF APPEARANCE, ENTRY OF PLEA, AND POSTING OF BAIL

CHECK A OR B:

☐ **A. CONTEST THE CITATION.** I wish to contest this citation. I have checked the box to the left. A copy of this citation and the bail are enclosed. I request a trial. I understand the court will send me the time, date and place of the trial. My legal rights are printed on this form.

I hereby waive my right to appear for arraignment, agree to post bail and enter a plea at NOT Guilty to the offense charged.

Signature _____ Date _____

Mailing Address _____

☐ **B. NO CONTEST AND BAIL FORFEITURE.** I do not wish to contest this citation. I have checked the box to the left. A signed copy of this citation and the bail are enclosed.

By checking NO CONTEST I understand that I give up my right to an arraignment, plea and sentencing. I give up my right to a trial. To have an attorney represent me, to call, hear and question witnesses against me, and to testify myself or to summon witnesses to testify for me. I further understand that this plea of NO CONTEST will have the effect of a JUDGMENT OF CONVICTION. Upon receipt by the court of this plea and bail, I will have the right to be informed in law of this and the full legal effect of this motion.

I hereby plead NO CONTEST and WAIVE MY RIGHTS as a defendant which are listed on this form.

Signature _____ Date _____

Mailing Address _____

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The amount of bail for this offense is \$ _____.

If you mail in your bail, the court will send you a receipt.

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Statement of
Dean Lewis C. Solmon, Ph.D.
on the
"Non-Smokers Rights Act of 1985"
S. 1440

September 30, 1985

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I am Lewis C. Solmon, Dean of the Graduate School of Education at UCLA. I received my doctorate in economics from the University of Chicago and I am the author of over a dozen books and numerous articles on economics, labor markets, education and career development. A copy of my curriculum vitae is attached.

This statement focuses on certain of the findings in S. 1440. The views I will express are my own and not necessarily those of the institution with which I am affiliated.

S. 1440, "to restrict smoking to designated areas in all United States Government buildings," states in Section 2 that "The Congress finds that...(3) smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance, and workers' compensation."

Since the practice of smoking has not declined as certain groups would like, new types of "information" are being offered and new tactics are being employed to

foster such a reduction. For example, some are trying to convince employers that corporate profits will decline (by as much as \$4,600 per smoker per year) if smokers are hired.

Such arguments are without merit. I am submitting with this statement a reprint of an article which I recently had published on this subject.

It is alleged that smokers are absent from work more often than nonsmokers. It is not clear, however, that a statistical correlation between smoking and absenteeism really exists. But even if it does, a causal connection between smoking and absenteeism is unproven and improbable. Numerous factors have been associated with absenteeism, including age, sex, family responsibilities, personal problems, use of drugs, type of employment, job responsibilities, job satisfaction and commuting time.

More specifically, many studies have reported a higher incidence of smoking among blue-collar workers than among white collar workers. Therefore, if relatively

low-paid assembly-line workers are more inclined to skip work occasionally than are top executives, a correlation between smoking and absenteeism probably would be linked to boredom, lack of commitment to the employer, low pay, and so on.

Unionized workers negotiate a benefits package that includes salary, insurance, vacations and sick leave. To get more of one benefit (e.g., sick leave) implies giving up some of another (e.g., salary). To take advantage of the total benefits package, workers must use what is theirs. Thus, workers tend to use all their vacation time and all their sick leave. If unionized smokers are entitled to more sick leave than are nonunionized managers who smoke less, they will be observed to take more sick days. But this is not the result of smoking. Rather, it is due to the trade-off between sick leave and relatively higher wages.

Companies incur costs for all benefits they offer, and allowable sick leave is no more costly than any other benefit. Workers who take more than their allowable sick leave see their salaries reduced and so they, not their employers, incur the costs. In sum, there is no proof that absenteeism or increased costs associated with absenteeism are caused by smoking.

Another claim frequently put forth as a cost of smoking is time lost on the job while smokers put down their pens or tools to light up. This argument assumes that smokers are able to take more leisure time at work than are nonsmokers. But nonsmokers may spend time drinking coffee, gossiping or daydreaming. And productivity should not be measured by minutes worked per day, but by output. It is well known that work breaks, regardless of how they are spent, can increase total productivity.

My own studies show that other alleged costs to companies from hiring smokers are equally invalid. We have been unable to find generalizable information on the relationship between group insurance rates and corporate smoking policies. This general line of argument is an example of efforts by anti-smoking groups to disseminate faulty information in an attempt to reorient behavior in the direction they favor, other than the one being chosen by informed citizens.

It has also been argued that workplace smoking restrictions will improve employee morale. Employers who seek optimal impact from expenditures to improve morale must determine the costs and benefits of various ways to achieve this goal. Before blindly implementing workplace smoking restrictions, they must ask what is

the evidence that this is a more effective means of improving morale than would be piping in music, buying new furniture, giving longer coffee breaks to all employees or increasing salaries. Moreover, since 50 million Americans are smokers, it should be obvious that smoking restrictions could offend a substantial portion of any organization's employees.

It is sometimes argued that because cigarette smoke may annoy certain nonsmokers, the government is justified in regulating the behavior of the smoker. In this case, all the burden is being placed on the smoker. Surely common courtesy and private negotiations among individuals would result in a better solution. Few would advocate restriction of all activities which might annoy someone. And in a free society there is serious question whether such behavior deserves to be restricted. Individual negotiations can achieve better results than unilateral decisions by over-protective government.

Indeed, a number of government agencies already have adopted formal smoking policies. And while such policies may meet the needs of those workplaces, formal restrictions may prove a burden to other agencies. My company, the Human Resources Policy Corporation,

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recently completed a survey of smoking policies in the nation's largest and fastest growing companies. I have attached a copy of the survey results for your information.

We found that most employers can and are dealing effectively with any smoking complaints that arise in the workplace. Almost two-thirds of the respondents encourage employees to use common sense and courtesy to resolve disputes about smoking in the workplace. Of those companies that do not have policies, 35 percent have considered and rejected a formal policy.

Of the companies that do have a formal smoking policy, most restricted smoking for employees who work with hazardous materials, sensitive machinery, or in food processing areas. Few companies reported prohibiting all employees from smoking (2.5 percent), nor do they prohibit all employees from smoking while working (2.9 percent).

Virtually none of the companies having formal policies said they implemented them to increase productivity or reduce costs.

Clearly, corporations in the private sector can and are dealing with any smoking-related problems in the workplace in manner which best fits their individual needs. There is no evidence to indicate the situation is any different in the public sector.

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1968 University of Chicago, Ph.D. (Economics)
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HONORS

Change Magazine poll as one of 100 top young leaders in the American Academy, 1978

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PREVIOUS POSITIONS

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- 1982-84 Joint Appointee, Institute of Industrial Relations,
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- 1982-83 Assistant Dean of Student Affairs and Research, UCLA
- 1974-1980 Executive Officer and Secretary/Treasurer, Higher Education Research Institute
- 1974-1980 Associate Professor in Residence and Professor in Residence (1979), Graduate School of Education, University of California, Los Angeles
- 1977-1979 Editor-in-Chief of quarterly journal, New Directions for Education, Work and Careers (Jossey-Bass Publishers)
- 1972-1974 Staff Director, Commission of Human Resources, National Research Council, Washington, D.C.
- 1970-1972 Assistant Professor of Economics, Graduate Center and City College, City University of New York Research Associate, National Bureau of Economic Research, New York
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SERVICE ON ADVISORY COMMITTEESCurrent

World Bank
UCLA, Center for the Study of Evaluation
Mount St. Mary's College, Los Angeles
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Brazil.

Completed

American Educational Research Association, Chair-Division, J. Publications Committee.

Western Association of Schools & Colleges (Accrediting Team Member)

American Council on Education/National Center for Education Statistics (Higher Education Advisory Committee).

National Endowment for the Humanities (Study of Women Doctorates in the Humanities).

National Research Council, Committee on National Educational Policies in Science and Engineering (Science Education).

Advanced Management Sciences (Cooperative Education).

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 American Education Research Association (Committee on Research Priorities).
 National Institute of Education (Education and Work).
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 Rand Corporation.

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Higher Educational Planning (A Bibliographic Handbook) for the National Institute of Education

Research in Higher Education (completed)Higher Education Review (completed)

Reviewer for: Economic Enquiry, American Economic Review, Educational Evaluation and Policy Analysis, National Endowment for the Humanities, National Institute of Education

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Institute for International Education, American Association of Collegiate Schools of Business, Western College Association, Association for College and University Staffing, University of Alabama, American Association for Higher Education, Wisconsin Union Lecture Series, American Educational Research Association, Western Association of Collegiate Schools of Business, Western College Placement Association, National Forum on Education and Work, California State University, Los Angeles, Association for Institutional Research, Western Economics Association, University of California, La Jolla, University of California Management Institute, Irvine, American Psychological Association, Vanderbilt University, National Endowment for the Humanities, State University of New York-Albany, Adult Education

RECENT LECTURES AND INVITED ADDRESSES, 1977 - present (continued)

Council of Greater St. Louis, Brown University, Eastern Economics Association, American Economics Association, University of California, Los Angeles, Hutchins Center for the Study of Democratic Institutions, Santa Barbara, American Association for the Advancement of Humanities, American Council on Education, National Manpower Institute, Campanha de Aperfeiçoamento do Pessoal do Ensino Superior, Brasília, Council for Institutional Co-operation, American Council on Education, Council on the Study of Religion, National Academy of Sciences, University of Maryland, DePaul University, Western Association of College Student Personnel Administrators, CETYS, Mexicali, Mexico, Mount St. Mary's College, National Management Association, American Electronics Association, Western Economics Association, Comparative and International Education Society, Institute for International Education, American Educational Research Association, New Orleans, Institute for Industrial Relations, UCLA, Council for International Exchange of Scholars, ACE, Canadian Society for the Study of Higher Education, American Society for Personnel Administrators, Personnel and Industrial Relations Association.

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Personnel Administrator

REPRINT

Sick leave policies may affect statistics

The other side of the smoking worker controversy

Lewis C. Solmon

Lewis C. Solmon, PhD, is a professor in the Graduate School of Education at UCLA. This paper is one result of his work as a consultant to several tobacco companies on economics and related matters.

William L. Weis has spearheaded a campaign to ban smoking and smokers from the workplace through a series of articles claiming that employers who do not hire smokers can "shave personnel costs by 20 percent, insurance premiums by 30 percent, maintenance charges by 50 percent, furniture replacement by 50 percent and disability payments by 75 percent."

Weis concludes that total costs per smoker per year to an employer are \$4,611 or \$4,689, depending upon his publication date. These assertions have been relied upon recently by other writers to support their arguments concerning smoking in the workplace. But closer scrutiny of Weis' material, reveals that his analysis is faulty and his conclusions are without merit. As Weis, himself, allows: "Skeptics might argue that these numbers are as soft as the underside of a porcupine, and that may be true." Indeed, virtually every part of his estimate is unfounded and he compounds his errors by surveying those persons most against smoking.

Weis asserts that, "Men who smoke more than 40 cigarettes per day are absent from work almost twice as often as their

peers who have never smoked." He concedes that such "absences may be due to causes other than smoking." There is good reason for that concession. Data appearing in the *Statistical Abstract of the United States (1974)*, which Weis relies upon at times, demonstrate that:

- Work loss for women smokers is smallest among women who smoke the most;
- Work loss for male smokers is smallest among males in the second highest smoking category;
- Work loss per person declines as the number of cigarettes smoked increases through the first three of the four smoking classes for men and the last three classes for women.

Lower absenteeism

More recent data are of equal interest. Among men, the 1976 National Health Survey showed smokers of less than 15 cigarettes per day to have an absenteeism rate of 2.6 days, compared to those who never smoked with 4.3 days. Other data inconsistent with Weis' claim appear in the 1979 Surgeon General's Report: Male smokers are reported to be absent less than ex-smokers and

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have less bed-disability, male smokers of less than 11 cigarettes per day are absent less than those who never smoked, and for women in the "17-plus" age category, present smokers reportedly have less bed-disability than either former smokers or those who never smoked.

Weiss uses a cross-sectional, weighted average of work-loss days obtained from the Statistical Abstract to estimate that in 1970 smokers were absent 2.2 days per year more than non-smokers. The exact same methodology (which we reject) using 1976 data leads to a difference in work-loss days of 1.3 rather than 2.2. This 41 percent decline in the difference in only six years could lead to the projection that in the 1980s the reported difference in absenteeism between smokers and non-smokers will disappear.

To make any sense out of the absenteeism point, it is necessary to know why workers are absent. Numerous factors have been associated with absenteeism including age, sex, family responsibilities, personal problems, use of alcohol, use of drugs, general health, type of employment, job responsibilities, job satisfaction and commuting time to work. One way to examine the claimed association between smoking and absenteeism is to compare demographic and occupational characteristics of smokers and non-smokers, and to compare the work-loss rates for equivalent demographic and occupational groups.

Many studies have reported a higher incidence of smoking among blue-collar workers than among white-collar workers. Therefore, if relatively low-paid assembly line workers are more inclined to skip work occasionally than are top executives, a correlation between smoking and absenteeism would be observed. But rather than a causal relationship between smoking and work-loss days, the correlation would probably be due to job boredom,

lack of commitment to the employer, low pay and so on.

Vacation time

Another confounding factor ignored by Weiss is the fact that sick leave substitutes for vacation time in certain jobs. Many employment arrangements offer a certain number of paid vacation days and a certain number of paid sick days per year. In effect, the contract offers a certain total number of paid days of work-loss. If the employee does not use all his sick days, he is not taking full advantage of his employment benefits. His total income

...in a country where the worker may change employers or elect to go into business for himself, most on-the-job training costs are borne by the employee in the form of a lower wage.

will be less than what was negotiated, if money wages are lower than they would have been without a paid sick leave policy and he does not take all his allowable sick leave. Clearly, salaries will be lower if a sick-leave policy is part of the total compensation package. Since employees in jobs with such sick-leave fringe benefits (i.e., blue-collar, unionized jobs) are more likely to smoke than are those in other jobs, this is a further indication that the smoking-absenteeism correlation, if it exists, is not causal.

As mentioned above, when a sick-leave policy is part of an employment agreement, part of the cost is borne by the employee in the form of lower monetary wages. If the employer expects a certain number of days of absence, he will include this in his evaluation of the (annual) productivity of the worker and pay him accordingly. The question then becomes whether extra sick

days taken by one group compared to another are beyond those allowable (and compensatable) by mutual agreement. If total work-loss days are about six per year (as indicated by the Statistical Abstracts of the United States), this seems fewer than most sick leave policies would allow and so would be included in the wage calculation.

Weiss cites an estimate, which he attributes to Luce and Schweitzer, that "on the average, smokers require an additional \$230 per person per year for medical care alone, and cost an additional \$765 per person per year for discounted lost earnings due to morbidity and premature mortality." Those figures cannot be found in Luce and Schweitzer, and Weiss does not indicate how he developed them.

More importantly, Weiss assumes "that the incremental savings from these factors [various insurance costs, taxes, social security, medicare programs, health care] flow directly to the employer." He admits that this is a "futuristic" - that is, unrealistic assumption. Why these items should be considered savings to employers is unimaginable.

As to the "discounted lost earnings" assertion, if workers fail to earn wages because they are ill or because they die, the "lost" earnings are a private cost to them, not a cost to their employers. Professor Weiss seems to suggest that such "lost earnings" may approximate the employer's cost to train a new employee. In fact, in a country where the worker may change employers or elect to go into business for himself, most on-the-job training costs are borne by the employee in the form of a lower wage.

Medical costs

As to the "additional medical cost" assertion, if medical costs are higher for smokers (we do not accept the data presented

as proof that such costs are higher), this is only a cost to employers if insurance rates rise for all employees and they are not offset by lower salaries. Furthermore, there may be an element of "double counting" in Weis' analysis. His "medical care" cost allegation includes the cost of "contributions to health, disability and life insurance plans; taxes for state and federal employment compensation and taxes for federal social security and medicare programs." Such cost factors seem to be included in Weis' "absenteeism" assertion, which is predicated upon an employer's expenses for "wages and salaries, including fringes and payroll taxes."

Weis cites a claim by Marvin Kristein of the American Health Foundation that smokers cost an extra \$45 per year for accidental injury and related workers' compensation cost. These assertions are based on studies allegedly showing "smokers have twice the accident rate of non-smokers."

Again, the suggested association between accidents and smoking, if it exists at all, is not likely to be causal. Since smokers tend to be found more often among blue-collar workers, they are more likely to be engaged in strenuous physical activity during the workday and therefore more likely to be exposed to physical harm through accidents. This analysis is supported by the fact that premium rates for workers' compensation are determined,

not by employee smoking habits, but by occupational category, carrier experience with the business and the statutory level for workers' compensation for the particular state.

...when a sick-leave policy is part of an employment agreement, part of the cost is borne by the employee in the form of lower monetary wages.

Biased remarks

The estimates used for time lost per day due to smoking are obtained from interviews with employers who have instituted non-smoking policies (presumably persons with an anti-smoking bias), and an estimate by a consulting firm—Robert E. Nolan of Simsbury, CT. Weis then estimates that a smoking employee loses 35 minutes per day by smoking (he assumes one in five smokes a pipe, which had a higher estimated time loss).

Weis seems to be assuming that smokers are able to spend more leisure time on the job because they are smokers. He has not shown that time spent smoking is not a substitute for non-smoking on the job leisure. For example, non-smokers may spend equal time at the coffee machine or talking to their co-workers.

The \$1,820 alleged cost in this category is clearly erroneous. It assumes that the equivalent of 18.2 days per year assertedly lost by smokers is not taken in other forms of leisure by non-smokers.

Property damage

Weis estimates costs by interviewing employers who have implemented non-smoking bans in their firms. This would seem to bias the estimates upwards because the employers are either predisposed against smoking, or have based their estimates on a particularly bad experience which caused them to implement the ban. These biases lead Weis to his annual figures of \$500 for property damage and \$500 for maintenance.

Since Weis' estimate of the claimed costs of "involuntary" smoking relies on the claimed costs alleged to be associated with direct smoking, it is subject to all the infirmities of those allegations described.

Weis implies that employers will benefit from refusing to hire smokers. But if substantial numbers of workers in a particular trade or profession are excluded from hiring consideration, there are inherent inefficiencies. The situation is not different from that which exists when women, blacks or other subgroups are systematically excluded for reasons unrelated to job performance. □

SMOKING POLICIES LARGE CORPORATIONS

HUMAN
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EXECUTIVE SUMMARY

Smoking Policies in Large Corporations

In late 1984, the Human Resources Policy Corporation, Los Angeles, Calif., surveyed 1100 of the nation's largest and fastest growing companies to determine the nature and extent of their workplace smoking policies. Results of this survey, completed in May 1985, challenge the widely reported trend toward restrictive workplace smoking policies in major corporations.

The Human Resources Policy Corporation sent an eight-page questionnaire to *Fortune* 1000 service and industrial companies, and to *Inc.* magazine's 100 fastest growing companies. Surveys were sent to the chief executive officer or the vice president for human resources.

The survey questioned respondents on the existence of corporate smoking policies and reasons for implementation. Results are based on responses from 445 companies. The 40 percent response rate is acceptable, given the sensitive nature of the data. The responses are representative of the full population when analyzed by region and industry type. Among the results:

Workplace smoking policies are not a trend among major companies.

Most respondents (63.8 percent) do not have a formal smoking policy, but rather encourage their employees to use common sense and courtesy to solve problems among themselves.

Companies in the north central region (28.1 percent) and the south (22.1 percent) are less likely to have a smoking policy than those in the west (44.7 percent).

Employees can work problems out for themselves.

Of the 63.8 percent of companies without smoking policies, 35 percent reported considering and rejecting one.

Of the companies that considered but rejected a smoking policy, most (59.3 percent) said they did not believe a policy would be accepted well by employees. When a smoking problem arises, 70.8 percent of all respondents said they encourage employees to work problems out for themselves. Fewer than one percent said the supervisor orders the employee to stop smoking.

Most workplace smoking policies that are in place apply only to certain employees.

The general company workplace policy prohibits some employees from smoking while working. This occurs most frequently with employees who deal with hazardous substances, sensitive machinery and equipment, or food. Few companies prohibit all employees from smoking while on company premises (2.5 percent) nor do they prohibit all employees from smoking while working (2.9 percent).

Most policies are initiated by management for safety reasons.

Virtually no companies reported implementing smoking policies to increase productivity or reduce costs.

The majority of workplace smoking policies have not been established because of increased public pressures or legislation.

Since public pressure for restrictive workplace smoking legislation has come about in the past three to five years, most company smoking policies cannot be attributed to this factor because most have been in effect for longer than five years.

Only nine percent of respondents said they had implemented a policy within the last year. Companies in the west (22.4 percent), followed by the northeast (10.4 percent) were most likely to have implemented policies within the past year. These regions of the country are facing the greatest number of legislative workplace restriction proposals.

Most companies do not consider smoking to be a factor in hiring.

Eighty-five point four percent of companies said they never consider whether a job applicant smokes and 81.1 percent never ask about an applicant's smoking habits. Only four percent always ask.

Ninety-nine point one percent said they hire smokers. Only four of the 445 respondents said they refused to hire smokers.

Companies do not want to segregate their workers or make major changes in the workplace.

Most (87.4 percent) do not assign employees to work areas or offices according to whether they smoke and 40.7 percent said they do not modify the work environment to accommodate nonsmokers.

SUMMARY

Smoking Policies in Large Corporations

Over the past several years there has been considerable debate over the need for legislation to restrict smoking in the workplace. Proponents of legislation claim a trend toward workplace smoking policies among major companies.

There is no trend. This comprehensive survey by the Human Resources Policy Corporation, Los Angeles, Calif., of the nation's largest and fastest growing companies reveals less than one-third have some form of smoking policy.

In most instances, the policy prohibits some employees from smoking while working with hazardous materials or sensitive equipment. These policies are generally accompanied by other safety regulations that are necessary because of the hazardous nature of the work. Most workplace smoking policies have been in effect for more than five years, long before employee smoking legislation came into vogue.

Companies are not instituting radical changes to accommodate nonsmokers. Few companies consider smoking behavior in their hiring practices and virtually no companies refuse to hire smokers.

Companies will provide adequate ventilation, post signs or even rearrange certain work areas to accommodate nonsmokers. But few are willing to construct new partitions or to segregate smokers from nonsmokers. Most companies simply encourage employees to work out problems among themselves.

Companies rarely consider cost savings, profit increases or employee morale when they consider a smoking policy. Policies usually are implemented by management because of safety factors. When companies reject smoking policies it is usually because of the difficulty of implementing a policy, the fact that employees would object, or the belief that any problems can be worked out among employees.

Companies in certain regions of the country, particularly the west, and in certain industries, usually where smoking may pose a safety hazard, are more likely than others to have a workplace smoking policy. However, most policies have simply formalized safety practices that have existed for years.

This survey clearly demonstrates that employers have and will continue to handle responsibly the issue of workplace smoking. State or local legislation concerning the issue is not needed. Employers place high confidence in the ability of their employees to work out any problems among themselves.

The Sample

In 1984, the Human Resources Policy Corporation of Los Angeles, Calif., surveyed the nation's largest and fastest growing companies to determine the nature and extent of their workplace smoking policies.

The large sample included *Fortune* 1000 service and industrial companies and *Inc.* magazine's 100 fastest growing companies. Chief executive officers or human resource vice presidents of each company received an eight-page questionnaire asking about the existence of corporate smoking policies and reasons for implementation.

Four hundred forty-five of the 1100 companies surveyed responded. This 40 percent response rate is acceptable given the sensitive nature of the data. If anything, companies having policies are likely to be overrepresented in the number of respondents, as they would be more likely to take time to complete the questionnaire. These responses are representative of the full population when analyzed by industry type (see Table 1).

Responses also are representative of industry by region (see Table 2). Overall, 17.1 percent of respondents are located in an area with workplace smoking legislation. Sixteen point nine percent of respondents are located in an area in which workplace smoking legislation is being considered.

Aims of the Study

In conducting the study, Human Resources Policy Corporation wanted to determine and understand formal smoking policies and other practices as they relate to employee smoking in large corporations. The study attempts to establish the extent and nature of smoking policies, what type of companies have them, why they were implemented, and how long they have been in effect. In addition, the study examines the relationship of smoking to company hiring practices, and how companies deal with smoking complaints.

The study tests several assumptions such as the "trend" toward workplace smoking restrictions and that smokers are finding it increasingly difficult to find employment. The results are presented in the hope that any corporate or public policy decision-making concerning smoking in the workplace will be based on factual information.

Research Director

Lewis C. Solmon, economist, dean of the graduate school of education at UCLA, and president of Human Resources Policy Corporation, developed and supervised the survey. Human Resources Policy Corporation is a social science and economic research organization. The survey was sponsored by The Tobacco Institute.

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THE SURVEY IN DETAIL

Most companies do not have smoking policies.

Contrary to the widely reported trend toward restrictive workplace smoking policies, most companies (63.8 percent) do not have a formal policy. Companies least likely to have a smoking policy are those located in the south (22.1 percent) and north central region (28.1 percent). Not surprisingly, companies most likely to have policies are in areas where a workplace smoking law is in effect (59.2 percent) and in the west (44.7 percent).

Industries least likely to have a policy are mining (11.1 percent), metals (16.1 percent) and diversified services (18.5 percent). Industries most likely to have a policy are pharmaceuticals (57.1 percent), insurance (56.0 percent), and finance (51.5 percent). *See Table 3.*

Companies have considered and rejected smoking policies.

Twenty-four point three percent of all respondents said they have considered and rejected a workplace smoking policy. Respondents said they rejected policies because employees would not accept a policy (59.3 percent), because employees can handle problems on their own (58.3 percent), or because a policy would be too difficult to implement (38.9 percent). Nineteen point eight percent of respondents said they believed a smoking ban would decrease employee morale. *See Table 4.*

Policies are rejected most frequently in the north central region (28.1 percent) and the south (24.2 percent). Policies are rejected less frequently in the west (22.4 percent) and the northeast (21.5 percent). *See Table 5.*

Companies encourage employees to work problems out for themselves.

When a smoking problem arises, most companies (70.8 percent) encourage employees to work problems out for themselves with common courtesy. Virtually no respondents (.9 percent) said they order an employee to discontinue smoking. *See Table 6.*

Twenty-two point five percent of respondents said they will encourage an employee to reduce smoking when a complaint arises. Nine point seven percent said they do nothing when a complaint arises.

Most workplace smoking policies apply only to certain workers.

Virtually no companies (only 2.5 percent) prohibit all employees from smoking on the premises nor do they prohibit smoking while working (2.9 percent). Thirty-four point eight percent of respondents said they prohibit certain employees from smoking while working. *See Table 7.*

Fifteen point seven percent of respondents said they restrict smoking for employees holding certain jobs. Those most likely to be prohibited from smoking are those employees who work with dangerous substances, sensitive machinery and food.

Smoking is most frequently restricted or prohibited in areas where there are sensitive chemicals, supplies and equipment as well as in food processing areas.

Companies post signs, inform employees individually, or distribute a policy manual to let employees know about their policy.

Increased public pressure is not a factor in establishment of workplace smoking policies.

Only nine percent of respondents said a workplace smoking policy was initiated within the last year. Most companies (20 percent) responded that their policy has been in effect for over five years. Only 3.6 percent of the policies have been in effect for between three and five years. *See Table 8.*

Since public pressure for restrictive workplace smoking legislation has come about in the past three to five years, most company smoking policies cannot be attributed to this factor—most have been in effect for more than five years.

Workplace smoking policies are more likely attributed to the realities and dangers in the workplace that have existed for many years. This is demonstrated by the fact that industries most likely to have had a policy for over five years are food (48.3 percent), pharmaceuticals (35.7 percent) and chemicals (31.8 percent). And 39.9 percent of companies where there are hazardous materials or sensitive machinery have had smoking policies for over five years. *See Table 9.*

Companies located in an area with a workplace smoking law (29 percent) and the west (22.4 percent) are most likely to have implemented a policy within the last year. Industries most likely to have implemented a policy within the last year are insurance, finance and scientific equipment.

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Workplace smoking policies are initiated by management.

Most workplace smoking policies were initiated by management (37.3 percent). Only 13.3 percent of respondents said the policy was initiated because of a state or local ordinance. See Table 10.

Virtually no companies implemented smoking policies to increase employee productivity or to reduce costs. See Table 11. Safety was the reason most often cited for initiating the policy (25.4 percent).

Most companies do not segregate smokers from nonsmokers.

Most companies (87.4 percent) do not assign employees to work areas or offices according to whether they smoke. See Table 12. Rearrangement of work area, to segregate smokers from nonsmokers is least likely in the south (16.8 percent) and north central regions (22.3 percent). It is most likely in areas where a workplace smoking law is in effect (53.9 percent) and in the west (40.8 percent).

Industries least likely to rearrange work areas to segregate smokers from nonsmokers (See Table 13) are food (10.3 percent), mining/petroleum refining (11.1 percent) and consumer goods (13.3 percent). Industries most likely to do so are insurance (48 percent), finance (38.2 percent) and scientific equipment (35.1 percent).

Companies do not want to make major changes in the workplace.

Forty point seven percent of respondents said they do not modify the workplace to accommodate smokers and nonsmokers. Companies in the south are least likely to modify the workplace. Companies in the west and in areas where a workplace smoking law is in effect are most likely to modify.

Industries least likely to modify are mining/petroleum refining, petrochemical and diversified services. Industries most likely to do so are pharmaceuticals, chemicals and insurance.

The most frequent modifications to accommodate nonsmokers are provision of adequate ventilation (40.4 percent), posting of signs (27.0 percent) and ventilation improvement (26.5 percent). The most unlikely changes are new partitions (4.3 percent) and separate offices for smokers and nonsmokers (4.0 percent).

Practically all companies hire smokers.

Contrary to anti-smoking literature, smokers are not finding it difficult to secure employment. Virtually all (99.1 percent) respondents said they hire smokers.

Only four (.9 percent) of the 445 respondents said they refuse to hire smokers (See Table 14). Even in the west, only 1.3 percent of respondents said they had such a policy.

Eighty-one point one percent of respondents never ask about a job applicant's smoking, while four percent said they always ask. Companies in utilities (90.5 percent), food (89.7 percent) and paper/publishing (89.5 percent) are least likely to ask (See Table 15). Even those industries most likely to question an applicant about smoking—pharmaceuticals, metals and transportation—did so only 14.3, 9.7 and 9.1 percent of the time, respectively.

Eighty-five point four percent of respondents said they never consider whether a job applicant smokes. Only 2.2 percent take smoking history into account. The retailing and transportation services industry (92.9 percent) is least likely to take this into account. The scientific equipment industry (8.1 percent), with its highly sensitive machinery, is most likely to take smoking into consideration.

Only 4.3 percent of respondents said they do not hire smokers for certain jobs. This is more likely to be the case in highly regulated companies where employees deal with sensitive machinery, hazardous substances and food. When dangers exist in the workplace, smoking is either regulated or smokers are precluded from those jobs altogether. Even those industries most likely not to hire smokers for certain jobs—diversified services, metals and utilities—did so only 11.1, 9.7 and 9.5 percent of the time, respectively.

Most companies do not assume the cost of smoking cessation programs.

Although 42.9 percent of respondents said they offer a smoking cessation program, only 29.0 percent of those companies assume the cost (See Table 16). Only 15.7 percent of respondents said they allow employees to participate on company time.

TABLE 1
THE SAMPLE

	Sample Number	% Sample	Responses	% Responses
Industry				
Food	79	7.1	29	6.9
Food				
Beverages				
Chemicals	52	4.3	22	4.5
Mining/Petroleum	66	5.9	27	5.9
Petroleum Refining				
Selling, Crude Oil Production				
Metals	64	4.7	31	5.6
Metal Manufacturing				
Metal Products				
Consumer Goods	75	6.4	30	6.6
Electronics, Appliances				
Musical Instruments, Toys				
Apparel				
Transportation Products	93	7.9	44	8.1
Shipbuilding, Railroads, Transportation				
Motor Vehicles				
Industrial Farm Equipment				
Aerospace				
Scientific Equipment	73	5.1	37	6.4
Office Equipment, Computers				
Measurement, Scientific & Photo Equipment				
Finance	183	16.4	68	16.0
Commercial Banks				
Diversified Finance				
Insurance	49	3.4	25	4.3
Diversified Services	88	10.3	27	6.6
Utilities	51	4.3	21	4.5
Petrochemical Products	41	2.6	23	3.6
Textiles, Vinyl Roofing				
Rubber, Plastics				
Glass, Concrete, Gypsum				
Pharmaceuticals	32	2.6	14	2.8
Pharmaceuticals				
Sunglasses, Cosmetics				
Retailing	46	4.6	14	4.0
Transportation Services	51	5.3	14	4.5
Paper/Publishing	52	4.7	19	4.5
Publishing, Printing				
Paper, Fiber, Wood				
Region				
Northeast	378	31.8	138	33.0
South	258	20.9	93	22.6
North Central	322	31.0	138	29.1
West	186	17.1	76	16.2

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TABLE 2
DISTRIBUTION OF SAMPLE BY REGION,
INDUSTRY AND EXISTENCE OF LAW

	Northeast	South	North Central	West
Law in Effect	15.6	5.3	18.0	32.9
Law Being Discussed	14.8	15.6	7.9	38.2
Food	27.6	20.7	44.8	6.9
Chemicals	36.4	36.4	22.7	4.5
Mining/Petroleum	22.2	51.9	14.8	11.1
Metals	38.7	12.9	38.7	9.7
Consumer Goods	30.0	20.0	26.7	23.3
Transportation Products	20.5	15.9	52.3	11.4
Scientific Equipment	35.1	8.1	18.9	37.8
Finance	36.8	20.6	22.1	20.8
Insurance	48.0	8.0	36.0	6.0
Diversified Services	18.5	25.9	25.9	29.4
Utilities	9.5	38.1	47.6	4.8
Petrochemical Products	43.5	26.1	26.1	4.7
Pharmaceuticals	64.3	0	57.1	14.3
Retailing	14.3	21.4	57.1	7.1
Transportation Services	0	28.6	28.6	42.9
Paper	26.3	15.8	26.3	31.6

TABLE 3
EXISTENCE AND TYPE OF POLICY
(by industry)

	Food	Chemicals	Mining Petroleum Refining	Metals	Consumer Goods	Trans- portation Products	Scientific Equipment	Finance
Company Has Smoking Policy	31.0	31.8	11.1	16.1	13.3	29.5	29.7	51.5
No Smoking While Working For All	6.9	9.1	7.4	0	5.3	0	2.7	1.5
No Smoking While Working For Some	37.9	31.8	11.1	25.8	23.3	38.6	43.2	41.2
No Smoking On Premises For All	3.4	4.5	3.7	0	3.3	0	5.4	1.5
No Smoking On Premises For Some	0	4.5	11.1	6.5	0	9.1	16.2	5.9
Restrict Smoking By Job Description	34.5	13.6	3.7	12.9	20.0	18.2	13.5	8.8
Restrict Smoking For All	27.6	27.3	22.2	9.7	10.0	22.7	32.4	42.6

	Insurance	Diversified Services	Utilities	Petro- chemical Products	Pharma- ceuticals	Retailing	Trans- portation Services	Paper/ Publishing
Company Has Smoking Policy	88.0	18.5	28.6	24.8	57.1	21.4	21.4	42.1
No Smoking While Working For All	0	3.7	0	8.7	0	0	0	5.3
No Smoking While Working For Some	40.0	29.6	33.3	47.8	50.0	28.6	28.6	38.8
No Smoking On Premises For All	0	3.7	0	4.3	7.1	0	0	5.3
No Smoking On Premises For Some	4.0	7.4	14.3	17.4	0	14.3	14.3	5.3
Restrict Smoking By Job Description	8.0	14.8	19.0	21.7	78.6	21.4	14.3	15.8
Restrict Smoking For All	52.0	25.9	38.1	30.4	42.9	21.4	21.4	52.6

TABLE 3
EXISTENCE AND TYPE OF POLICY
(by industry)

	Food	Chemicals	Mining Petroleum Refining	Metals	Consumer Goods	Trans- portation Products	Scientific Equipment	Finance
Company Has Smoking Policy	31.0	31.8	11.1	16.1	13.3	29.5	29.7	51.5
No Smoking While Working For All	8.9	9.1	7.4	0	3.3	0	2.7	1.5
No Smoking While Working For Some	37.9	31.8	11.1	25.8	23.3	38.6	43.2	41.2
No Smoking On Premises For All	3.4	4.5	3.7	0	3.3	0	5.4	1.5
No Smoking On Premises For Some	0	4.5	11.1	6.5	0	9.1	16.2	5.9
Restrict Smoking By Job Description	34.5	13.6	3.7	12.9	20.0	18.2	13.5	8.8
Restrict Smoking For All	27.6	27.3	22.2	9.7	10.0	22.7	32.4	42.6

	Insurance	Diversified Services	Utilities	Petro- chemical Products	Pharma- ceuticals	Retailing	Trans- portation Services	Paper/ Publishing
Company Has Smoking Policy	56.0	18.5	28.6	34.8	57.1	21.4	21.4	42.1
No Smoking While Working For All	0	3.7	0	8.7	0	0	0	5.3
No Smoking While Working For Some	40.0	29.6	33.3	47.8	50.0	28.6	28.6	36.8
No Smoking On Premises For All	0	3.7	0	4.3	7.1	0	0	5.3
No Smoking On Premises For Some	4.0	7.4	14.3	17.4	0	14.3	14.3	5.3
Restrict Smoking By Job Description	8.0	14.8	19.0	21.7	28.6	21.4	14.7	15.8
Restrict Smoking For All	52.0	25.9	38.1	30.4	42.9	21.4	21.4	52.6

TABLE 4
WHY SMOKING POLICIES ARE REJECTED
(overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North- east	South	North Central	West	In Effect	Being Discussed	Neither
Too Costly To Implement	4.6	0	13.0	5.1	0	0	9.7	3.4
Too Difficult To Implement	38.9	31.0	47.8	51.3	11.8	26.3	45.2	39.7
Not Accepted By Employees	59.3	69.0	60.9	64.1	29.4	57.9	45.2	67.2
Not Accepted By Clients	10.2	13.8	6.7	12.8	0	15.8	0	13.8
Employees Can Handle On Own	58.3	65.5	66.2	43.6	70.6	42.1	51.6	67.2
No Complaints About Smoking	28.7	20.7	30.4	23.1	52.9	15.8	29.0	32.8

TABLE 5
REJECTION OF SMOKING POLICIES
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
Policy Considered For Company But Rejected	24.3	21.5	24.2	28.1	22.4	25.0	41.3	19.7

TABLE 6
COMPLAINT PROCEDURES
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
Encourage Employees To Work Out Problems	70.8	66.6	78.9	66.2	71.1	71.1	73.3	70.1
Complainant Moved To New Area	6.3	5.2	6.3	5.8	9.2	10.5	6.7	5.1
Try To Get Smoker Moved To New Area	3.4	3.7	3.2	2.9	3.9	6.6	5.3	2.0
Try To Get Smoker To Reduce Smoking	22.5	17.0	24.2	21.6	31.6	28.9	29.3	19.0
Order Smoker To Discontinue Smoking	9	7	0	2.2	0	1.3	0	1.0
Nothing Is Done	9.7	11.1	10.5	9.4	6.6	0	5.3	13.3
Other Measures Taken	3.1	2.2	0	2.9	9.2	6.6	2.7	2.4

TABLE 7
EXISTENCE AND TYPE OF POLICIES
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
Company Has Smoking Policy	31.9	35.6	22.1	28.1	44.7	59.2	22.7	27.2
No Smoking While Working For All	2.9	1.5	3.2	2.2	6.6	2.6	0	3.7
No Smoking While Working For Some	34.8	37.0	36.8	34.5	28.9	48.7	30.7	32.3
No Smoking On Premises For All	2.5	1.5	0	2.9	6.8	2.6	1.3	2.7
No Smoking On Premises For Some	7.9	5.9	9.5	7.9	9.2	13.2	8.0	6.5
Restrict Smoking By Job Description	15.7	14.8	17.9	19.4	7.9	18.4	13.3	15.8
Restrict Smoking For All	30.1	32.6	21.1	25.9	44.7	53.9	24.0	25.5

TABLE 8
TIME SMOKING POLICY IN EFFECT
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
Less Than Six Months	3.4	3.7	1.1	1.4	9.2	13.2	1.3	1.4
Six Months To One Year	5.6	6.7	3.2	2.2	13.2	15.8	5.3	3.1
One To Three Years	8.1	12.6	5.3	4.3	10.5	14.5	10.7	5.8
Three To Five Years	3.6	3.0	3.2	5.8	1.3	7.9	2.7	2.7
Over Five Years	20.0	14.8	23.2	25.2	15.8	18.4	12.0	22.4
No Policy/Do Not Know	59.3	59.3	64.2	61.2	50.0	30.3	69.0	64.6

TABLE 9
TIME SMOKING POLICY IN EFFECT
(by industry)

	Food	Chemicals	Mining Petroleum Refining	Metals	Consumer Goods	Transportation Products	Scientific Equipment	Finance
Less Than Six Months	0	0	0	0	3.3	6.8	2.7	5.9
Six Months To One Year	0	0	7.4	0	0	4.5	8.1	8.8
One To Three Years	0	9.1	3.7	6.5	6.7	11.4	10.8	14.7
Three To Five Years	6.9	0	0	0	0	0	2.7	5.9
Over Five Years	48.3	31.8	7.4	12.9	16.7	11.4	16.2	19.1
No Policy/Do Not Know	44.8	59.1	81.5	80.6	73.3	65.9	59.5	45.6

	Insurance	Oversight Services	Utilities	Petro- chemical Products	Pharma- ceuticals	Retailing	Transportation Services	Paper/ Publishing
Less Than Six Months	8.0	3.7	4.6	0	0	0	0	10.5
Six Months To One Year	8.9	3.7	4.8	4.3	14.3	0	14.3	15.8
One To Three Years	12.0	7.4	9.5	0	7.1	0	0	10.5
Three To Five Years	4.0	7.4	14.3	8.7	7.1	0	0	0
Over Five Years	28.9	14.8	4.0	25.1	35.7	21.4	7.1	31.6
No Policy/Do Not Know	40.0	63.0	61.9	80.9	35.7	78.6	78.6	31.6

TABLE 10
SMOKING POLICY ORIGINATION
(overall percentage, by region, by workplace smoking law)

	Region					Workplace Smoking Law		
	Overall	North east	South	North Central	West	In Effect	Being Discussed	Neither
State/Local Ordinances	13.3	12.8	12.6	9.4	22.4	59.3	10.2	30.5
Employee Plebiscite	7	7	0	7	1.3	1.3	1.3	3
Employee Union	9	1.5	0	1.4	0	0	2.7	7
Management	37.3	41.5	32.8	38.7	38.8	53.9	24.0	36.4
Medical/Health Personnel	12.1	19.3	9.5	11.5	3.9	19.7	13.3	9.9
Legal Staff	3.1	2.2	1.1	5.0	3.9	10.5	1.3	1.7
Other	6.3	6.7	3.2	5.0	11.8	6.6	10.7	5.1

TABLE 11
REASONS FOR ORIGINATING POLICY
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
Legal Mandates	16.0	15.6	9.5	15.1	26.3	53.9	9.3	7.8
Safety Regulations	25.4	27.4	29.5	25.2	17.1	26.3	18.7	26.9
Health Reasons	19.6	27.4	9.5	18.0	21.1	32.9	20.0	16.0
Employee Preference	15.5	20.0	10.5	12.9	18.4	23.7	20.0	12.2
Increase Employee Productivity	2.0	7	3.2	2.2	2.6	2.6	4.0	1.4
Reduce Costs And Increase Profits	2.7	3.0	2.1	2.9	2.6	5.3	6.7	1.0
Annoyance To Customers	7.4	8.9	8.4	7.2	3.9	11.8	6.7	6.5
Management Opposes Smoking	4.5	2.2	4.2	2.9	11.8	5.3	6.7	3.7

TABLE 12
WORKPLACE MODIFICATION
 (overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North-east	South	North Central	West	In Effect	Being Discussed	Neither
No Segregation In Work Areas	87.4	91.9	87.4	89.9	75.0	77.6	86.7	90.1
Smokers And Nonsmokers In Different Offices	4.0	5.2	1.1	3.6	6.6	10.5	5.3	2.0
Separate Work Areas	25.6	26.7	16.8	22.3	40.8	53.9	37.3	15.3
Existing Partitions To Segregate	16.4	10.4	10.5	18.0	31.6	42.1	16.0	9.9
Construct New Partitions	4.3	3.0	2.1	6.5	5.3	9.2	6.7	2.4
Provision of Adequate Ventilation	40.4	38.5	35.8	44.6	42.1	60.5	44.0	34.4
Improvement Of Ventilation	26.5	25.2	22.1	31.7	25.0	50.0	24.0	21.1
Provision Of Smoke Removal Devices	22.7	17.0	18.9	23.7	35.5	42.1	22.7	17.7
Posting Of Signs	27.0	31.1	22.1	20.1	38.2	63.2	24.0	18.4
Work Environment Not Modified	40.7	41.5	46.3	43.9	26.3	13.2	33.3	49.7

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TABLE 13
WORKPLACE MODIFICATION
(by industry)

	Food	Chemicals	Mining Petroleum Refining	Metals	Consumer Goods	Transportation Products	Scientific Equipment	Finance
No Segregation In Work Areas	82.8	77.3	92.6	96.8	96.7	84.1	75.7	86.8
Smokers And Nonsmokers								
In Different Offices	3.4	0	7.4	0	3.3	4.5	18.9	2.9
Separate Work Areas	10.3	18.2	11.1	16.1	13.3	25.0	35.1	38.2
Existing Partitions To Segregate	6.9	13.6	14.8	3.2	10.0	20.5	21.6	23.5
Construct New Partitions	3.4	9.1	3.7	3.2	0	9.1	8.1	1.5
Provision Of Adequate Ventilation	27.6	45.5	29.6	41.9	30.0	43.2	43.2	39.7
Improvement Of Ventilation	10.3	13.6	25.9	22.6	10.0	25.0	32.4	27.9
Provision Of Smoke Removal Devices	24.1	31.8	7.4	9.7	20.0	22.7	21.6	38.2
Posting Of Signs	17.2	50.0	18.5	16.1	20.0	29.5	35.1	22.1
Work Environment Not Modified	51.7	22.7	59.3	51.6	46.7	45.5	37.8	30.9

	Insurance	Diversified Services	Utilities	Pharmaceutical Products	Pharmaceuticals	Retailing	Transportation Services	Paper/ Publishing
No Segregation In Work Areas	92.0	88.9	71.4	95.7	92.9	100.0	85.7	89.5
Smokers And Nonsmokers								
In Different Offices	4.0	3.7	0	0	7.1	0	0	0
Separate Work Areas	48.0	14.8	33.3	26.1	21.4	39.6	28.6	26.3
Existing Partitions To Segregate	20.0	11.1	19.0	17.4	14.3	21.4	21.4	15.8
Construct New Partitions	4.0	7.4	9.5	0	0	0	0	5.3
Provision Of Adequate Ventilation	68.0	25.9	47.6	30.4	71.4	42.9	42.9	36.8
Improvement Of Ventilation	52.0	14.8	38.1	39.1	28.6	21.4	35.7	36.0
Provision Of Smoke Removal Devices	28.0	18.5	14.3	13.0	35.7	21.4	0	31.8
Posting Of Signs	40.0	7.4	28.6	17.4	57.1	35.7	21.4	47.4
Work Environment Not Modified	24.0	51.9	42.9	56.5	14.3	28.6	42.9	31.6

TABLE 14
SMOKER HIRING POLICIES
(overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North- east	South	North Central	West	In Effect	Being Discussed	Neither
Always Consider Smoking	2.2	1.5	3.2	1.4	3.9	1.3	0	3.1
Never Consider Smoking	85.4	90.4	83.2	90.6	69.7	84.2	82.7	86.1
Always Ask About Smoking	4.0	5.2	5.3	2.2	3.9	2.6	2.7	4.8
Never Ask About Smoking	81.1	85.2	78.9	88.5	63.2	75.0	78.7	83.3
Policy Prevents Hiring Smokers	9	7	1.1	7	1.3	1.3	0	1.0
No Smokers For Certain Jobs	4.3	3.7	4.2	2.9	7.9	2.6	8.0	3.7

TABLE 15
SMOKER HIRING POLICIES
(by industry)

	Food	Chemicals	Mining Petroleum Refining	Metals	Consumer Goods	Trans- portation Products	Scientific Equipment	Finance
Always Consider Smoking	3.4	0	7.4	3.2	0	4.5	8.1	0
Never Consider Smoking	89.7	88.4	88.9	80.5	86.7	86.4	78.4	91.2
Always Ask About Smoking	3.4	4.5	7.4	9.7	0	9.1	8.1	0
Never Ask About Smoking	89.7	81.8	81.5	83.9	89.0	78.5	75.7	88.9
Policy Prevents Hiring Smokers	0	0	3.7	0	0	2.3	2.7	0
No Smokers For Certain Jobs	3.4	4.5	0	9.7	6.7	2.3	8.1	0

	Insurance	Diversified Services	Utilities	Petro- chemical Products	Pharma- ceuticals	Retailing	Trans- portation Services	Paper/ Publishing
Always Consider Smoking	0	0	4.8	0	0	0	0	0
Never Consider Smoking	84.0	74.1	90.5	82.6	78.6	92.9	92.9	78.9
Always Ask About Smoking	0	0	4.8	4.3	14.3	0	0	0
Never Ask About Smoking	80.0	74.1	90.5	82.6	57.1	85.7	78.6	89.5
Policy Prevents Hiring Smokers	0	3.7	0	0	0	0	0	0
No Smokers For Certain Jobs	0	11.1	9.5	8.7	0	0	0	5.3

TABLE 16
SMOKING CESSATION PROGRAMS
(overall percentage, by region, by workplace smoking law)

	Overall	Region				Workplace Smoking Law		
		North- east	South	North Central	West	In Effect	Being Discussed	Neither
Smoking Cessation Programs	42.9	51.1	33.7	43.2	39.5	56.6	45.3	38.6
Prominent With Two Or More Programs	49.7	54.8	46.3	48.9	46.1	57.9	50.7	47.3
Participation On Company Time	15.7	17.8	14.7	12.2	19.7	22.4	24.0	11.9
Paid With Company Funds	29.0	31.1	24.2	28.8	31.6	39.5	33.3	25.2
Incentives To Stop Smoking	8.5	9.6	10.5	7.9	5.3	10.5	5.3	8.8

WILLIAM V. ROTH, JR. DELAWARE CHAIRMAN

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 CHARLES W. MATTHEWS, JR. MARYLAND
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 DAVID DURENBERGER, MINNESOTA
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JOHN M. DUNCAN, STAFF DIRECTOR
 MARGARET P. CRENSHAW, SECURITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510

LOS OCT -2 11:24

September 27, 1985

The Honorable Ted Stevens
 Chairman
 Subcommittee on Civil Service,
 Post Office and General Service
 Committee on Governmental Affairs
 U.S. Senate
 Washington, D.C. 20510

Dear Ted:

The enclosed copy of a letter from Dr. Lyman J. Olsen,
 Director of the Division of Public Health of the Delaware
 Department of Health and Social Services, provides comment in
 support of the Non-Smokers Rights Act of 1985, S. 1440. I would
 appreciate your including Dr. Olsen's letter in the hearing
 record on this bill.

Sincerely,

Bill

William V. Roth, Jr.
 Chairman

WVR/MH/ph
 Enclosure

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STATE OF DELAWARE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
JESSE S. COOPER MEMORIAL BUILDING
FEDERAL AND WATER STREETS
DOVER, DELAWARE 19901

1985 SEP -5 PM 12:10

August 30, 1985

Senator William V. Roth, Jr.
104 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roth:

We urge you to support Senate Bill 1440, a bill to regulate smoking in federal buildings.

More than thirty States have legislation restricting smoking in public buildings. The Delaware Division of Public Health recently developed and adopted a smoking policy covering all open and public areas under its jurisdiction. Also, smoking policies are recommended to all employers who participate in Division-sponsored worksite health promotion programs. We believe that the federal government, which generated so much of the research and education about smoking and health, should set an example by adopting this legislation.

An ever increasing number of studies are contributing to the body of knowledge on "passive smoking". In one study, published in the New England Journal of Medicine (September 27, 1984), the authors recommended that family members not smoke in the presence of children, that smokers be encouraged to abstain when working in the same room with non-smokers, and that smoking in public places be restricted as much as possible.

This is fairly typical of the conclusions being drawn from current research. Policies restricting smoking in public areas

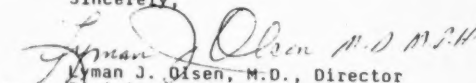
- can help discourage active smoking;
- can prevent eye and skin irritation among smokers and non-smokers;
- can protect non-smokers with allergic reactions to cigarette smoke;

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- may help protect non-smokers from increased risks of cancer and other diseases associated with "passive smoking";
- may be important in protecting pregnant women from increased risks.

Please include this letter as part of the hearing record.

Sincerely,


Lyman J. Olsen, M.D., Director
Division of Public Health

LJO/fm

cc: Thomas P. Eichler, Secretary
Department of Health & Social Services

Statement for Larry Hopkins
Before the United States Senate Committee
on Governmental Affairs Subcommittee on
Civil Service, Post Office and General Services

Mr. Chairman, thank you for the opportunity to oppose S. 1440, which you have titled the "Non-Smokers Rights Act."

I am speaking as a citizen; as a Member of Congress; and especially as a member of two committees of the House of Representatives which would be affected if this bill ever becomes a law.

As a citizen, I must tell you that this bill goes against the grain of everything I believe in. It interferes with basic individual rights; it creates a bureaucratic monster; and it costs large sums of money, for which the taxpayer receives exactly zero benefits.

As a Member of Congress, I do not want to be a party to putting up signs "...at least 18 inches wide and 6 inches high, with lettering at least 1.25 inches high" everywhere from the ASCS office in Fayette County to the halls of the United States Capitol. And I especially don't want to be a party to it at a price tag estimated at more than \$200 million for implementation; and another \$300 million or so per year in lost productivity.

As a member of the House Committee on Agriculture Subcommittee on Peanuts and Tobacco who represents a tobacco growing district, I see this bill as just one more oblique effort, cloaked in well-meaning righteousness, to shut down a major national industry and put even more American farmers off their land. And in this particular effort, the righteousness is based on completely false assumptions. I want no part of it.

It is as a member of the House Committee on Armed Services, however, that I am most incensed. No matter how this legislation

would have it, the military is different than the civil service. Yet S. 1440 apparently puts our military installations in the United States and abroad under the jurisdiction of some smoking czar in the General Services Administration for the purposes of carrying out this legislation.

Mr. Chairman, our military personnel live and work under conditions which do not resemble in any way the conditions encountered by the civilian workforce. After government buildings, what is the next step? Are we talking about putting 8- by 16-inch signs in our battleships, bombers and submarines? Will the GSA assign a civilian enforcer to tag along during field exercises and nail 8- by 16-inch signs on trees in the bivouac area? Will squad leaders setting up perimeter defense also have to worry about who is smoking where, and who isn't? Where will it all stop?

This is not the kind of battle the people of Kentucky sent me here to fight. I think they were, and are, a lot more concerned over budget deficits and national defense than they are over the size and shape of "no smokikng" signs.

Thank you.

887451

JOHN PAUL MAGNUSSEN, CHICAGO, ILLINOIS
CHRISTOPHER P. WYLLIE, OHIO
ELWOOD HILLS, INDIANA
GERALD B. SOLOMON, NEW YORK
BOB McEWEN, OHIO
CHRISTOPHER H. SMITH, NEW JERSEY
BAR BURTON, INDIANA
DOR BURDON, TENNESSEE
MICHAEL, BRANFAX, FLORIDA
NANCY LEE JOHNSON, CONNECTICUT
GUY V. MOHRAN, NEW YORK
THOMAS J. REICE, PENNSYLVANIA
WILLIAM M. HENDON, NORTH CAROLINA
JOHN G. BOWLAND, CONNECTICUT

NINETY-NINTH CONGRESS.

G. V. (SONNY) MONTGOMERY

U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

335 CANNON HOUSE OFFICE BUILDING

Washington, DC 20515

October 7, 1985

Honorable Ted Stevens
Chairman
Subcommittee on Civil Service, Post
Office, and General Services
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reference to the hearings you held last week on S. 1440. You and your staff may recall that Mr. Hamerschmidt and I wrote you a letter on July 29, 1985, concerning the effect of the bill on the Veterans Administration. I regret our schedule did not permit us to appear in person to present our views on the bill; however, Mr. Hamerschmidt and I would appreciate it very much if the enclosed joint statement could be printed as part of the permanent hearing record.

Mr. Chairman, if the measure is reported we would ask that the bill be amended so that no provision thereof would apply to the Veterans Administration. We believe the current agency policy relating to designated smoking and nonsmoking areas is adequate. If changes in current policy are warranted, we believe such changes should be made by the head of the agency or his designee.

Sincerely,

G. V. (SONNY) MONTGOMERY
Chairman

GVM:cls

Enclosure

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G. V. Montgomery

STATEMENT OF
HONORABLE G. V. (SONNY) MONTGOMERY
AND
HONORABLE JOHN PAUL HAMMERSCHMIDT
ON S. 1440

MR. CHAIRMAN, WE APPRECIATE THE OPPORTUNITY TO STATE OUR VIEWS ON THE PROVISIONS OF S. 1440. AS CHAIRMAN AND RANKING MINORITY MEMBER OF THE HOUSE VETERANS AFFAIRS COMMITTEE, WE ARE DEEPLY CONCERNED BY THE THRUST OF THIS BILL WHICH WOULD INJECT THE GENERAL SERVICES ADMINISTRATION INTO THE AFFAIRS OF THE VETERANS ADMINISTRATION AND ITS OPERATION OF VA OFFICES, HOSPITALS, CLINICS AND OTHER FACILITIES.

YOU WILL RECALL THAT WE WROTE YOU ON JULY 29, 1985 IN OPPOSITION TO THE BILL AS INTRODUCED. IN OUR LETTER WE STATED THAT "...WE WANT TO EXPRESS OUR OPPOSITION TO THE BILL AS IT WOULD APPLY TO THE VETERANS ADMINISTRATION. WE THINK THE DECISION AS TO WHERE SMOKING IS ALLOWED IN ANY BUILDING OR FACILITY OF THE VA SHOULD BE PRESCRIBED BY THE ADMINISTRATOR OF VETERANS AFFAIRS AND NOT THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION."

"THE VETERANS ADMINISTRATION BUILDS ITS OWN HOSPITALS AND OPERATES AND MAINTAINS THOSE HOSPITALS. IT WOULD BE VERY INAPPROPRIATE, IN OUR VIEW, FOR THE ADMINISTRATOR OF GSA TO MAKE ANY DECISION RELATING TO THE OPERATION AND MAINTENANCE OF VA HOSPITALS." OUR VIEWS HAVE NOT CHANGED.

IN RESPONDING TO OUR LETTER, YOU STATED THAT YOU WOULD GIVE OUR VIEWS CAREFUL CONSIDERATION, BUT ADDED, "... I WOULD LIKE TO POINT OUT THAT S. 1440 DOES NOT NECESSARILY PRECLUDE THE ADMINISTRATOR OF GSA FROM DELEGATING THE ACTUAL IMPLEMENTATION OF DESIGNATED SMOKING AREAS TO THE HEADS OF THE INDIVIDUAL AGENCIES."

MR. CHAIRMAN, THE LANGUAGE IN S 1440 IS CLEAR AND UNEQUIVOCAL. IT STATES THAT WITHIN 180 DAYS AFTER ENACTMENT, THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION SHALL PRESCRIBE AND IMPLEMENT THE RULES AND REGULATIONS AT ISSUE IN ANY BUILDING UNDER THE JURISDICTION AND CONTROL OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES. WE CAN FIND NO LANGUAGE IN THIS BILL, NOR ARE WE AWARE OF ANY PROVISION OF LAW, WHICH CONFERS UPON THE ADMINISTRATOR OF GSA THE POWER TO DELEGATE TO THE VETERANS ADMINISTRATION, OR ANY OTHER ADMINISTRATION FOR THAT MATTER, WHOSE BUILDINGS ARE NOT UNDER THE CONTROL OF THE GSA, THE IMPLEMENTATION OF A GSA REGULATION WHICH MIGHT BE MADE APPLICABLE TO SUCH BUILDINGS.

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OF EQUAL CONCERN IS THE FACT THAT THIS BILL, IF ENACTED, WILL CONFER UPON YOUR COMMITTEE AND THE HOUSE GOVERNMENT OPERATIONS COMMITTEE JURISDICTION OVER VA MATTERS WHICH ARE NOW THE EXCLUSIVE JURISDICTION OF THE VETERANS AFFAIRS COMMITTEES OF BOTH BODIES. THERE IS NO NECESSITY FOR THIS, AND SHOULD THE BILL PASS THE SENATE IN ITS PRESENT FORM, WE WILL OPPOSE IT IN THE HOUSE.

THE VA, PURSUANT TO LAWS WHICH FALL WITHIN THE JURISDICTION OF OUR COMMITTEE AND THE SENATE VETERANS AFFAIRS COMMITTEE, HAS PROVEN THAT IT IS FULLY CAPABLE OF PROMULGATING AND IMPLEMENTING ITS OWN RULES AND REGULATIONS. IN FACT, IT HAS ALREADY DESIGNATED AREAS WHERE SMOKING IS NOT PERMITTED IN VA HOSPITALS. SURELY, IT IS VASTLY MORE QUALIFIED THAN THE GSA TO DETERMINE THE NEED FOR SMOKING AND NO SMOKING AREAS IN ITS OWN FACILITIES, ESPECIALLY IN ITS MEDICAL FACILITIES, AND TO DESIGNATE THEM.

MR. CHAIRMAN, THE VA ALREADY HAS THE AUTHORITY TO ISSUE ITS OWN REASONABLE AND NECESSARY RULES AND REGULATIONS ON THIS SUBJECT. THAT POLICY IS CLEARLY DEFINED IN CIRCULAR 10-84-159, DATED SEPTEMBER 20, 1984. THE FACT THAT IT HAS DONE SO MAKES IT CLEAR THAT THERE IS NO NECESSITY FOR THIS BILL, AS IT WOULD APPLY TO THE VETERANS ADMINISTRATION.

IN THE EVENT THIS COMMITTEE DECIDES TO REPORT A BILL, HOWEVER, WE REQUEST AND URGE YOU AND THE MEMBERS OF THIS COMMITTEE TO EXCLUDE THE VETERANS ADMINISTRATION FROM THE APPLICATION OF ITS PROVISIONS.

Statement for Hal Rogers
Before the United States Senate Committee
on Governmental Affairs Subcommittee on
Civil Service, Post Office and General Services

Mr. Chairman, I appreciate this opportunity to submit this testimony on your bill S. 1440.

This bill, the "Non-Smokers Rights Act of 1985", strikes me as legislation this country really does not need. It especially strikes me as unnecessary when I look at estimates of the amount of money it will cost to implement and maintain.

I have not seen any figures put forth by any official government agency, but I have seen some figures compiled by an eminent economist who has testified in detail during these hearings.

These are some of the numbers I am seeing: The United States government in 1982 owned more than 385,000 buildings within the 50 states, and leased space at another 49,000 locations. Just one sign priced at \$25 for each of these buildings would cost nearly \$11 million. Many of these buildings are large multi-story office structures which would require dozens, or even hundreds of signs. And given that the signs are going to be contracted for by the United States government, \$25 per sign may be a substantial underestimate.

These estimates do not count military installations at home and abroad. They do not count U.S.-owned or -leased property overseas. They do not count buildings under the jurisdiction of the federal court system. And they do not count this building, or the Capitol, or the other office buildings under the jurisdiction of the Congress.

Mr. Chairman, I am a member of the House Committee on Appropriations, and I know you serve on the Appropriations Committee here in the Senate. We spend so much of our time trying to squeeze

the most out of every dollar that we spend on behalf of the taxpayers. We spend a lot of time weighing options and establishing priorities. In the face of growing federal budget deficits, I would not like to be required to appropriate \$200 million or \$100 million or even \$10 million for a program like this one which fills no demonstrable need and which produces no public benefit.

Sometimes I wish that the Congress, like some of the state legislatures, required every bill to be accompanied by an independent estimate of costs before hearings could be held. As I say, I have not seen any estimates of cost from any federal entity. I suspect the figures I have quoted vastly underestimate the cost. I think an honest, impartial, independent estimate of the cost of this bill would scare off any support this bill might have. I hope you will get that estimate before any of us are required to cast a vote.

Thank you very much, Mr. Chairman, for your courtesy.

STATEMENT OF
HONORABLE CONSTANCE HORNER

DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT
FOR THE
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

ON
S. 1440, A BILL TO RESTRICT SMOKING TO DESIGNATED AREAS
IN ALL UNITED STATES GOVERNMENT BUILDINGS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO DISCUSS S. 1440, THE "NON-SMOKERS RIGHTS ACT OF 1985."

TERENCE GOLDEN, THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION, HAS TESTIFIED ON THIS BILL. AND I AGREE COMPLETELY WITH MR. GOLDEN'S VIEW OF THE BILL. THE HEALTH AND SAFETY OF FEDERAL EMPLOYEES IS OF PRIMARY CONCERN TO ALL OF US IN THE ADMINISTRATION, AND I BELIEVE THAT MR. GOLDEN IS PUTTING THE RIGHT EMPHASIS ON THE ISSUE IN HIS INTENTION TO WORK WITH THE SURGEON GENERAL, WITH OTHER HEALTH AGENCIES, AND WITH EMPLOYEE ORGANIZATIONS ON IMPLEMENTING THE BILL IF IT IS ENACTED.

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SMOKING, OR RATHER NON-SMOKING, IS AN ISSUE IN WHICH I HAVE A VERY PERSONAL INTEREST. I QUIT SMOKING TWO-AND-A-HALF YEARS AGO, AFTER SMOKING TWO PACKS A DAY FOR TWENTY YEARS. I REALLY DO NOT LIKE THE SMELL OF SMOKE ANYWHERE NEAR ME, AND SYMPATHIZE COMPLETELY WITH THE CONCERNS OF PEOPLE SUBJECTED AGAINST THEIR WILL TO OTHER PEOPLE'S SMOKE. ON THE OTHER HAND, I ALSO HAVE CONSIDERABLE SYMPATHY FOR THOSE WHO HAVE NOT BEEN ABLE TO QUIT.

OVERRIDING THESE PERSONAL SYMPATHIES, HOWEVER, IS THE PROFESSIONAL CONCERN WHICH WE GOVERNMENT MANAGERS MUST FEEL. ANY STRICT RULES ON SMOKING MUST NOT RESULT IN UNDUE DISRUPTION OF GOVERNMENT OPERATIONS, OR IN A LOSS OF EMPLOYEE PRODUCTIVITY. AND WE MUST GUARD AGAINST INCURRING LARGE COSTS IN PROVIDING BOTH SMOKERS AND NON-SMOKERS WITH WORKING ENVIRONMENTS CONDUCTIVE TO PRODUCTIVITY.

CERTAINLY, IF S. 1440 IS ENACTED, WE AT OPM WILL WORK CLOSELY WITH MR. GOLDEN AND HIS GSA STAFF TO COME UP WITH THE BEST POSSIBLE WAYS TO SAFEGUARD THE HEALTH AND RESPECT THE INDIVIDUAL RIGHTS OF ALL FEDERAL EMPLOYEES.

THANK YOU.

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STATE OF IDAHO

DEPARTMENT OF HEALTH AND WELFARE 9 35
DIVISION OF HEALTH, STATEHOUSE, BOISE, IDAHO 83720-9990

August 29, 1985

The Honorable Ted Stevens
Senate Office Building
Washington, DC 20510

Dear Senator Stevens:

This is my support of your S.1440 design to regulate smoking in federal buildings so that smoking may take place only in defined areas.

We are currently writing regulations for the Idaho Clean Indoor Air Act which was passed by the Idaho Legislature and which will go into effect on January 1, 1986. Our bill did not provide for control of smoking in the work place, and our regulations to implement our Act will also not deal with smoking in the work place. One of the most common complaints we have received is from workers who wish us to write regulations to control the smoking by their immediately adjacent coworkers. Since our Act does not give us authority, except in public places, we have not included the work site, e.g., the individual offices and work spaces in our regulations.

However, we recognize that public buildings from which government agencies operate may have established to themselves priorities for which the public has no alternative but to attend. We discussed automobile license plate issuing offices; drivers license issuing offices; public welfare eligibility interview offices; and, from the federal standpoint, offices where the public must go to pick up Internal Revenue Service forms, etc. Some of us felt that where public activities of a monopoly nature are undertaken, smoking should be allowed only in prescribed places such as a properly designated area in one-half of the cafeteria or lounge. Our Act did not give us the authority to go that far and, therefore, we did not include it in our regulations.

I will support a federal statute controlling smoking in federal public buildings except in clearly defined areas.

Please include this letter as part of the hearing record.

Sincerely yours,

Fritz R. Dixon, M.D., Chief
Bureau of Preventive Medicine and
State Health Officer

FRD/hp/F5

cc: Rose Bowman
Ralph W. Carpenter
The Honorable Steven D. Symms
The Honorable James A. McClure

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ASTHO ACTION MEMORANDUM

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS
1311A Dolley Madison Blvd. Suite 3A, McLean, VA 22101
Phone (703) 556-9222

TO: State Health Officials

FROM: George K. Degnon, CAE

DATE: August 16, 1985

Cigarette Tax

The Senate Finance Committee's Subcommittee on Taxation and Debt Management will hold a hearing on September 10, on S.874, to raise the cigarette tax to 32¢ per pack (16¢ of which would go to Medicare Part A). You are urged to write to Senator John Chafee, and your Senators, expressing your support of maintaining the federal excise tax on cigarettes at the current level of 16¢. The tax is scheduled to drop to 8¢ on October 1 when Congress acts. The House Ways and Means Committee has already acted to keep the tax at 16¢.

One argument in favor of maintaining the tax at 16¢ is that some states have enacted or are planning to enact a state increase on cigarette tax with funds being utilized to support public health education activities including smoking cessation programs.

The tobacco industry is generating widespread grass roots support in favor of dropping the tax to 8¢. This should be a priority issue for public health agencies and public health organizations.

Requests to testify should be submitted by August 19 to: Betty Scott-Boom, Committee on Finance, SD-219 Dirksen Senate Office Bldg., Washington, DC 20510. Written testimony or comments for the record should also be submitted to her.

Smoking in Federal Buildings

The Senate Governmental Affairs Committee, Subcommittee on Civil Service, Post Office and General Services will hold a hearing on September 30 and October 1 to consider S.1440, designed to regulate smoking in federal buildings so that smoking may take place only in defined areas. Tobacco advocates are lining up support against the bill by key tobacco state legislators, businesses and organizations.

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You are urged to write Senator Ted Stevens (R-AK), sponsor of the bill and Chair of the Subcommittee, and your Senators, expressing your support of the bill. Your experience in smoking cessation programs and in the development of worksite no-smoking policies should be detailed. Ask that your letter be included as part of the hearing record.

Requests to testify or written testimony may be submitted to Pat Phillips, Chief Clerk, Subcommittee on Civil Service, Post Office and General Services, Committee on Governmental Affairs, SD-340 Dirksen Senate Office Building, Washington, DC 20510.

This is an important public health issue and we should be showing support of members of Congress who are willing to take leadership on our issues by at least matching the volume of activity by tobacco advocates. Your help is essential--and please send a copy of your communication on these issues to the ASTHO office for follow-up.

Finance Committee members are:

Rep.: Packwood (OR), Dole (KS), Roth (DE), Dawforth (MO), Chafee (RI),
Heinz (PA), Wallop (WY), Durenberger (MN), Armstrong (CO), Symms (ID),
and Grassley (IA).

Dem.: Long (LA), Bentsen (TX), Matsunaga (HI), Moynihan (NY), Baucus (MT),
Boren (OK), Bradley (NJ), Mitchell (ME), and Pryor (AK).

Government Affairs Committee members are:

Rep.: Roth (DE), Stevens (AK), Mathias (MD), Cohen (ME), Durenberger (MN),
Rudman (NH), and Cochran (MS).

Dem.: Eagleton (MO), Chiles (FL), Nunn (GA), Glenn (OH), Levin (MI), Gore (TN).

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ASTHO WASHINGTON REPORT

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS
1311A Daley Madison Blvd., Suite 3A, McLean, VA 22101
Phone (703) 556-9222

TO: State Health Officials

FROM: George Degnon & Maxine Mantell

DATE: August 16, 1985

LEGISLATION

Action Recommended

The July 25 Washington Report provided information on the efforts to renew the Title X Family Planning Program. Your help is important in bringing to your Congressional delegation information on the significance of family planning as an effective public health program which reduces the number of unintended pregnancies. Should you see any of your members at home during their August recess, do take the opportunity to discuss the importance of prompt action to renew the authority for this program. Urge support of H.R. 2369 and S.881.

Bills Introduced

- Senator Bingaman introduced S.1387 which establishes a national nutrition monitoring and surveillance system. The purpose of the legislation is to obtain timely information about nutritional health of Americans, including diet, nutrition and health status measurements. The bill promotes public health and the prevention of disease by coordinating and improving federal efforts in nutrition monitoring.
- H.R. 2436, the National Nutritional Monitoring & Related Research Act will be marked up in September by the Subcommittees of the Agriculture Committee and the Science and Technology Committees. Support for H.R. 2436 and S.1387 will help passage of bills viewed to be in support of state public health nutrition monitoring efforts.
- H.R. 2924, amendments to the Federal Food, Drug and Cosmetic Act, was proposed by Rep. Waxman. This bill authorizes emergency action with respect to pesticide chemicals which present an imminent hazard to the public health, and revises procedures for changes in tolerances and exemptions for pesticide chemicals. The legislation requires EPA to review within 180 days all exemptions for pesticides, mandates EPA to review all tolerances established for pesticides, and simplifies procedures that EPA must use to establish, amend, or revoke an exemption or tolerance for pesticide.

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- Rep. Synar (D-OK) introduced H.R. 2950, a bill to require labeling for all smokeless tobacco products and advertisements. A similar bill in the Senate is being introduced by Senators Lugar (R-IN) and Hatch (R-UT).
- H.R. 2951, a bill to establish a program of home and community-based services to the elderly, was introduced by Rep. Molinari.
- Senator Moynihan proposed S.1430 which requires the Secretary of HHS to make grants to eligible state and local governments to support AIDS programs. The legislation would provide \$25 million in 1986 to support state and local education campaigns, and \$10 million to establish and operate state and local alternative testing sites for antibodies to the HTLV-III virus. The bill would ensure confidentiality for those who receive the blood test and for those who participate in the education programs.
- H.R. 3010, legislation to extend the health planning authority for one year, was introduced by Rep. Waxman.

Bills Passed

- The Supplemental Appropriations Bill provides \$2 million for four demonstration projects for Emergency Medical Services for Children. ASTHO is represented on a DHHS Advisory Group developing implementation guidelines for this new program by Lyman Olsen, M.D., of Delaware.

INFORMATIONAL ITEMS

HCFA Administrator

Names are now being mentioned for replacement of Carolyn Davis. William Roper, M.D., the White House Health Advisor and former city health officer in Alabama, Sheila Burke, formerly of the Senate Finance Committee and now Deputy Chief of Staff to Senator Majority Leader Dole, and three corporate personalities: Sheila Smythe of New York Blue Cross Blue Shield, Helen Cummings of Hospital Corporation of America, and William Ryan of Johnson & Johnson.

Sulfites

FDA will be announcing a ban on sulfites to preserve fresh vegetables and fruit in restaurants and supermarkets in the Federal Register this week. A 30-day comment period will be proposed with a final rule expected before the end of the year. FDA has favored voluntary efforts to post sulfite warning signs on restaurant menus. In March, a House hearing on the issue drew widespread support for a ban.

Seat Belts

Five more states have enacted safety belt use laws (Connecticut, Hawaii, Nebraska, Oklahoma and Texas) bringing the total to 13 states. Other states which require safety belts in automobiles are: Illinois, Indiana, Michigan, Missouri, New Jersey, New Mexico, New York, and North Carolina.

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Department of Human Resources

HEALTH DIVISION

1400 S.W. 5th AVENUE, PORTLAND, OREGON 97201 PHONE 229-5032

August 26, 1985

Honorable Mark O. Hatfield
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hatfield:

I am writing to express support for Senate Bill 1440, designed to regulate smoking in federal buildings.

The Health Division monitors the Oregon Indoor Clean Air Act which provides for regulated smoking areas in public buildings. This program has met with a good deal of success and is generally supported by most Oregonians. I have attached supportive material outlining the provisions of Oregon's act. It is a workable measure which promotes the public's health in a cost effective manner.

I would appreciate having this letter and the attached material included as part of the hearing record. If there are any questions, please contact me.

Sincerely,

Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, Health Division

RMG:mp

Attachment

AN EQUAL OPPORTUNITY EMPLOYER

Oregon Statewide B.E.P. One Day Training Program

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adverse reaction to an insect sting. (1981 c.367 §5)

433.830 Immunity of trained person rendering emergency assistance. No cause of action shall arise against a person who has successfully completed an educational training program described in ORS 433.815 for any act or omission of the person when acting in good faith while rendering emergency treatment pursuant to the authority granted by ORS 433.805 to 433.830, except where such conduct amounts to gross negligence. (1981 c.367 §6)

OREGON INDOOR CLEAN AIR ACT

433.835 Definitions for ORS 433.835 to 433.875. As used in ORS 433.835 to 433.875 and 433.990 (5):

(1) "Public place" means any inclosed indoor area open to and frequented by the public, except those public places subject to ORS 441.815, including but not limited to restaurants, as defined in ORS 624.010, bowling centers, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.

(2) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. (1981 c.384 §2)

Notes: Section 13, Chapter 384, Oregon Laws 1981, provides:

Sec. 13. This Act first becomes operative on July 1, 1983.

433.840 Policy. The people of Oregon find that because the smoking of tobacco creates a health hazard to those present in confined places, it is necessary to reduce exposure to tobacco smoke by requiring nonsmoking areas in certain places. (1981 c.384 §1)

433.845 Smoking prohibited except in designated areas. No person shall smoke or carry any lighted smoking instrument in a public place except in areas designated as smoking areas pursuant to ORS 433.850. (1981 c.384 §3)

433.850 Designating areas where smoking permitted; changing areas; posting signs. (1) Pursuant to rules adopted by the Health Division, a proprietor or person in charge of a public place may designate areas in which smoking is permitted:

(2) No public place may be designated in its entirety as a smoking area except:

(a) Cocktail lounges and taverns.

(b) Inclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers.

(c) Rooms or halls being used for private social functions where the seating arrangements are under the control of the sponsor of the function.

(d) Retail businesses primarily engaged in the sale of tobacco or tobacco products.

(e) Restaurants with seating capacity for 30 or fewer patrons or restaurants with air filtration systems meeting the standards established pursuant to ORS 433.855.

(3) Notwithstanding any other provisions of ORS 433.835 to 433.875 and 433.990 (5), in the case of restaurants, as defined in ORS 624.010, or bowling centers, nothing in ORS 433.835 to 433.875 and 433.990 (5) is intended to prevent the owner or person in charge from expanding or contracting the size of the smoking area to meet the requirements of patrons.

(4) The proprietor or person in charge of a public place, except places described in subsection (2) of this section, shall post appropriate signs. (1981 c.384 §4, 5)

433.855 Duties of Health Division; limitations; compliance checks. (1) The Health Division, in accordance with the provisions of ORS 183.010 to 183.030:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and 433.990 (5);

(b) Shall be responsible for compliance with such rules; and

(c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (5) for each violation of a rule of the division applicable to ORS 433.850 (2) or (4), to be collected in the manner provided in ORS 441.712, 441.735 and 441.740. All penalties recovered shall be paid into the State Treasury and credited to the General Fund.

(2) In carrying out its duties under this section, the Health Division is not authorized to require any changes in ventilation or barriers in any public place. However, nothing in this subsection is intended to limit the authority of the division to impose any requirements under any other provision of law.

(3) In public places which the Health Division regularly inspects, the Health Division

tion shall check for compliance with the provisions of ORS 433.835 to 433.875 and 433.990 (5). In other public places, the Health Division shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (5). If repeated complaints are received, the Health Division may take appropriate action to insure compliance.

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425, 448.100 and 624.510, or contracted with the Health Division under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (5) that are applicable to those licensed facilities and shall have the same authority as the Health Division for such enforcement. (1981 c 384 §6)

433.860 Enforcement. The Health Division or local board of health may institute an action in the circuit court of the county where the violation occurred to enjoin repeated violations of ORS 433.850. (1981 c 384 §7)

433.865 Waiver authorized. Upon request, the Health Division may waive the provisions of ORS 433.835 to 433.875 and 433.990 (5) for any public place if it determines that:

(1) There are valid reasons to do so; and

(2) A waiver will not significantly affect the health and comfort of nonsmokers. (1981 c 384 §8)

433.870 Regulation in addition to other smoking regulations. The regulations authorized by ORS 433.835 to 433.875 and 433.990 (5) are in addition to and not in lieu of any other law regulating smoking. (1981 c 384 §11)

433.875 Short title. ORS 433.835 to 433.875 and 433.990 (5) shall be cited as the Oregon Indoor Clean Air Act. (1981 c 384 §12)

PENALTIES

433.990 Penalties. (1) Violation of ORS 433.003, 433.106 to 433.156, 433.216, 433.220, 433.255, 433.260 or 433.715 is punishable, upon conviction, as provided in ORS 431.990.

(2) Violation of ORS 433.010 is punishable, upon conviction, by imprisonment in the penitentiary for not more than three years.

(3) Violation of ORS 433.710 is punishable, upon conviction, by a fine of not less than \$5 nor more than \$50. If the nuisance is not removed within five days after the first offense, it is considered a second offense and every like neglect of each succeeding five days thereafter is considered an additional offense.

(4) Violation of ORS 433.035 is punishable upon conviction by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

(5) Violation of ORS 433.850 (2) or (4) is a violation punishable by a fine or fines totaling not more than \$100 in any 30-day period.

(6) Violation of ORS 433.345 or 433.365 or failure to obey any lawful order of the director issued under ORS 433.350 is a misdemeanor.

(7) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon conviction, by a fine of not more than \$10,000. (Subsection (8) (1969 Replacement Part) enacted as 1957 c 422 §2, subsection (8) derived from 434.990, 1971 c 648 §23, subsection (9) enacted as 1971 c 413 §6, subsection (10) enacted as 1971 c 597 §7, 1973 c 779 §46, 1979 c 492 §6, 1979 c 828 §13, subsection (5) enacted as 1981 c 384 §10)

OREGON ADMINISTRATIVE RULES
CHAPTER 333, DIVISION 15 — HEALTH DIVISION

DIVISION 15

IMPLEMENTATION OF THE OREGON
CLEAN AIR ACT — PROHIBITION OF
TOBACCO SMOKING IN PUBLIC
PLACES EXCEPT FOR DESIGNATED
SMOKING AREAS

Definitions — Minimum Safety Standards for Glass and Plastic
to be Installed in Certain Building Openings
333-15-005 [HB 239, f. 2-9-70, ef. 7-1-70;
Repealed by HD 25-1982, f. & ef. 12-6-82]

Rules

333-15-010 [HB 239, f. 2-9-70, ef. 7-1-70;
Repealed by HD 25-1982, f. & ef. 12-6-82]

Authority and Purpose

333-15-025 (1) These rules are adopted pursuant to the authority granted the Oregon State Health Division, Department of Human Resources, in ORS 433.835 through 433.875 pertaining to the prohibition of tobacco smoking in public places except for designated smoking areas.
(2) The purpose of the Oregon Indoor Clean Air Act is to reduce the health hazard of persons in confined public places caused by inhaling smoke from tobacco products.

Stat. Auth. ORS Ch. 433
Hst. HD 10-1983, f. & ef. 7-1-83

Definitions

333-15-030 (1) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

(2) "Cocktail Lounge" means any establishment or portion of an establishment licensed by the Oregon Liquor Control Commission to operate under a Class "A" or "B" dispensers license, excluding any establishment or portion of an establishment whose primary function is the serving of meals to be consumed on the premises, and which serves alcoholic beverages incidental to the serving of a meal. And, excluding those establishments or portions of establishments licensed by the Oregon Liquor Control Commission to operate under a Class "C" dispensers license.

(3) "Designated smoking area" means any area set aside by a proprietor or person in charge of a public place where tobacco smoking is permitted and where signs indicate same.

(4) "Division" means the Oregon State Health Division, Department of Human Resources.

(5) "Meal" means any food made available to be consumed on the premises except foods that are pre-packaged or are served as snacks or appetizers.

(6) "Open to and frequented by the public" means any area where the public can freely enter or move without specific invitation. Sale of tickets for entry is not considered specific invitation.

(7) "Public place" means any enclosed indoor area open to and frequented by the public, except those subject to ORS 441.815, including but not limited to restaurants as defined in ORS 624.010, bowling centers, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.

(8) "Smoking device" means any cigar, cigarette, pipe or other smoking equipment.

(9) "Tavern" means any establishment licensed by the Oregon Liquor Control Commission to operate under a RMB license, or those restaurant licenses having separate areas where the primary purpose is the serving of alcoholic beverages and excluding any establishment or portion of an establish-

ment whose primary function is the serving of meals and which serves alcoholic beverages incidental to the serving of a meal.

Stat. Auth. ORS Ch. 433
Hst. HD 10-1983, f. & ef. 7-1-83

General Provisions

333-15-035 (1) No person shall smoke or carry any lighted smoking device in a public place except in designated smoking areas.

(2) No public place may be designated in its entirety as a smoking area except:

(a) Cocktail lounges and taverns;
(b) Enclosed offices or rooms occupied exclusively by a smoker even though the offices or rooms may be visited by non-smokers;

(c) Rooms or halls being used for private social functions where seating arrangements are under the control of the sponsor of the function;

(d) Retail businesses primarily engaged in the sale of tobacco or tobacco products;

(e) Restaurants with seating capacity for thirty (30) or fewer patrons;

(f) Restaurants with mechanical air filtration systems meeting the standards and conditions set forth in rule 333-15-050.

(3) Owners or proprietors of restaurants or bowling centers may expand or contract the size of designated smoking areas to meet the requirements of their patrons. Restaurants must provide non-smoking areas which are reasonably proportionate to the preference of the users and so located as to obtain the maximum effect of existing physical barriers and ventilation systems, and seating arrangements, to minimize the toxic effect of smoke in adjacent non-smoking areas.

(4) Nothing in these rules shall prevent a proprietor or person in charge of a facility from designating the entire area as a non-smoking area.

(5) In a public place which contains two or more rooms which are used for the same activity, the responsible person may designate one entire room as smoking permitted as long as at least a portion of one other comparable room has been designated as a non-smoking area.

(6) In the case of a public place consisting of a single room in which a smoking permitted area is designated, the responsible person shall be responsible for reserving and clearly designating a no smoking area on one side of the room.

Stat. Auth. ORS Ch. 433
Hst. HD 10-1983, f. & ef. 7-1-83

Signs

333-15-040 (1) A public place shall post signs designating smoking and non-smoking areas. Such signs shall be either the international symbols for smoking and non smoking or shall be legibly printed.

(2) All signs used to identify a facility which is exempted from these rules in rule 333-15-035(2)(a), (c) and (f) that has been designated entirely as a smoking area shall use the statement, "This entire establishment is a 'SMOKING AREA', or a similar statement. The sign shall be posted conspicuously on all entrances normally used by the public.

(3) All facilities where the entire public place is identified as a no smoking area will be so identified by a sign conspicuously posted on all entrances normally used by the public.

(4) All signs used to identify a designated smoking area in a public place shall use either the words "SMOKING AREA" or "SMOKING PERMITTED", and all signs used to identify a no smoking area shall use the words "NO SMOKING" or equivalent language. Additional words or symbols may be used, but the additional printing shall not obscure the basic

OREGON ADMINISTRATIVE RULES
CHAPTER 33, DIVISION 15 — HEALTH DIVISION

required words.

(5) Portable tent signs or the equivalent may be used on individual tables, desks, counters, etc. to designate smoking and no smoking areas in lieu of the posting requirements of section (1) of this rule.

(6) All signs used to identify smoking or no smoking areas in a public place shall be placed at a height and location easily seen by a person in the establishment and not obscured in any way. The words "SMOKING AREA", "SMOKING PERMITTED" or "NO SMOKING" on signs, except those signs allowed in section (5) of this rule, shall be printed in letters of no less than one (1) inch in height.

(7) "NO SMOKING" signs only need to be posted in areas adjacent to smoking areas so that a clear delineation exists.

(8) Restaurants with controlled seating may place a sign at the entry which indicates the availability of smoking and no smoking areas upon request in lieu of the posting requirements of section (1) of this rule.

Stat. Auth. ORS Ch. 433

Hist. HD 10-1983, f. & ef. 7-1-83

Ashtrays

33-15-045 Portable ashtrays are prohibited in all no smoking areas.

Stat. Auth. ORS Ch. 433

Hist. HD 10-1983, f. & ef. 7-1-83

Mechanical Air Filtration Systems

33-15-060 (1) Mechanical air filtration systems shall be permitted in restaurants in lieu of designated smoking areas provided:

(a) The air flow rate and inflow-outflow pattern of air is sufficient to draw tobacco smoke directly into the air filtration system and preclude its drift from a table to an adjoining table.

(b) An air filtration system is utilized which is effective to an efficiency rating of 85% removal or more by ASHRAE Standard 52-76 Dust Spot Test.

(c) System is of adequate capacity to serve the entire dining and waiting area.

(2) In order for the Division to approve an exemption for an air filtration system, the applicant will be required to furnish certification by an engineer qualified in air ventilation that in design, installation and performance said system meets subsection (1)(a) - (c) of this rule.

Stat. Auth. ORS Ch. 433

Hist. HD 10-1983, f. & ef. 7-1-83

Compliance

33-15-055 No public place is required to make any changes in ventilation or burners unless they wish to be a designated smoking area in entirety as provided in rule 33-15-035(2)(f).

Stat. Auth. ORS Ch. 433

Hist. HD 10-1983, f. & ef. 7-1-83

Waivers

33-15-060 The Administrator of the Division may waive the provision of these rules:

(1) When it is demonstrated to the satisfaction of the Division that strict compliance with the rule would be highly burdensome or impractical due to special conditions or causes; and

(2) When the public or private interest in the granting of the waiver is found by the Division to clearly outweigh the interest of the application of uniform rules; and

(3) When alternate measures are provided which, in the opinion of the Division, will provide adequate protection to the health and safety of the public.

Stat. Auth. ORS Ch. 433

Hist. HD 10-1983, f. & ef. 7-1-83

(July, 1983)

2 - Div 15

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Public Employee Department AFL-CIO

KENNETH T. BLAYLOCK
President

ALBERT SHANKER
Secretary-Treasurer

ANGELO FOSCO VINCENT R. SOMBROTTO
Executive Vice Presidents

GERALD W. McENTEE JOHN J. SWEENEY

JOHN F. LEYDEN
Federal/Postal Division

Executive Directors

AL BILIK
State/Local Division

STATEMENT

of the

PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

before the

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

on

S. 1440
NON SMOKERS RIGHTS ACT OF 1985

October 8, 1985

815 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006 • (202) 393-2820-21

BEST COPY AVAILABLE

This statement is to submit the views of the Public Employee Department(PED), AFL-CIO, to the Subcommittee on Civil Service, Post Office and General Services of the Senate Governmental Affairs Committee on S. 1440, the Nonsmokers Rights Act of 1985. The legislation will have a direct impact on the nearly one and one-half million federal and postal employees represented by twenty-four international unions affiliated with our Department.

At the urging of two of the PED's affiliated unions, who were strongly opposed to the bill, we recently sought recommendations from other member unions on what action, if any, the Department should take on S. 1440. Responses were unanimously opposed to the bill, and we have attached copies of those responses for the Subcommittee's information and consideration.

The primary concern with this bill is that it infringes on the collective bargaining process. We believe that smoking policies are best determined through collective bargaining on a case-by-case basis. Only in this way can the specific concerns of individual parties involved and local workplaces affected be addressed. S. 1440 disallows this approach, imposing arbitrary and inflexible rules for the across-the-board establishment of smoking restrictions.

By threatening the collective bargaining system, the proposed legislation has the very real potential for wreaking havoc with labor relations in the federal sector, as well as setting a dangerous precedent for similar problems in the state and local sectors.

More specifically, we are concerned that the legislation makes no attempt to protect workers' rights. Indeed, it undermines the principle of employee rights, giving arbitrary powers to management.

The legislation has been introduced at a time when many of the existing structures to protect workers' rights already have been eroded. In the past five years there has been turmoil at the Department of Labor. Protections provided under the National Labor Relations Act have been diminished considerably. And the role of the Office of Personnel Management to protect the rights of federal workers has become virtually non-existent. S. 1440 would jeopardize one of the few remaining effective means of support for workers' rights in the resolution of on-the-job disputes -- the grievance system. Arbitrary management decisions, on both sides of the smoking issue, would burden the system with unnecessary disputes, overloading it to the point of ineffectiveness.

In conclusion, we are opposed to S. 1440 because it infringes on the collective bargaining process, imposing arbitrary work rules irrespective of the specific concerns of individual workers and worksites. We believe workplace smoking policies are best determined through the established process of collective bargaining on a case-by-case basis.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

MACHINISTS BUILDING, 1305 CONNECTICUT AVENUE, WASHINGTON, D. C. 20036
Area Code 202-857-5200



August 19, 1985

Mr. John Leyden
Executive Director of
Federal Postal Division
Public Employee Department
AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006

Dear John,

I am writing regarding Ted Stevens' proposed legislation to restrict smoking to designated areas in all United States Government buildings (S. 1440.) My primary concern with the bill is that it infringes on the collective bargaining process, effectively amending federal labor law without consideration for the deliberative due process established for that purpose. This sort of arbitrary adoption of work rules (and fines), as described in the bill, sets a dangerous precedent -- not only in the federal sector, but in the state, local, and private sectors as well.

Furthermore, we believe that smoking policies are best determined through collective bargaining on a case-by-case basis. Only in this way can the specific concerns of individual parties involved and local workplaces affected be addressed. S. 1440 disallows this approach, imposing arbitrary and inflexible rules for the across-the-board establishment of smoking restrictions.

With respect to a number of our members' workplaces, the proposed legislation is simply absurd. Consider, for example, the machinist working in a federal shipyard: the air in his workplace is so polluted with toxic substances that tobacco smoke is of little or no concern. And in fact, the resources necessary for imposing and enforcing workplace smoking restrictions would be much better spent on cleaning up the carbon monoxide, radon, formaldehyde, asbestos, benzene, and other substances that present serious occupational safety and health hazards to thousands of American employees. To no avail, organized labor has spent the better part of five years encouraging the federal government in this direction.

ORGANIZE

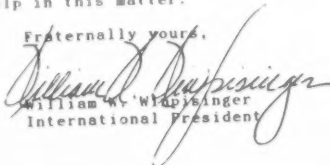
Finally, let me say that the proposed legislation gives total and arbitrary authority to management, with no protection of workers' rights. Since it is doubtful that the federal government will create a special "smoking police force" to enforce the legislation, the task is likely to be performed subjectively and selectively, with the role of judge, jury, and executioner falling to management.

In conclusion, let me reiterate my primary concern that the bill sets a dangerous precedent for the arbitrary adoption of work rules at a time when workers' rights in this country are already in retreat. The proposed legislation presents serious labor relations implications for unions in the federal sector and others.

I would appreciate your bringing this matter to the attention of all the members of the Public Employee Department, to see if some sort of common position on the legislation can be developed.

Thank you for your help in this matter.

Fraternally yours,


William W. Wadsworth
International President

WWW/pel

cc: National Coordinator GED, John F. Meese

PATRICK J. CAMPBELL
GENERAL PRESIDENT



UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA
101 CONSTITUTION AVE., N. W.
WASHINGTON, D. C. 20001

August 26, 1985

Mr. John Leyden
Executive Director of Federal/
Postal Division
Public Employee Department, AFL-CIO
815 16th Street, N. W.
Washington, D. C. 20006

Dear Mr. Leyden:

I am writing regarding Senate Bill 1440, introduced by Senator Ted Stevens. The bill represents the first federal effort since the 1970s to legislate against smoking in public places, targeting all U. S. government facilities for potentially severe restrictions.

The United Brotherhood of Carpenters and Joiners of America (UBCJA), with over 650,000 members, opposes this legislation on two grounds: its intent is to arbitrarily force people to stop smoking, and it imposes a strong anti-labor bias on labor relations in general. The negative economic effects of artificially reducing tobacco consumption (which this legislation hopes to achieve) on union members is fairly obvious, but there are broader concerns with the bill which I believe are of concern to you and all members of the Public Employee Department.

The proposed legislation has the very real potential for wreaking havoc with labor relations in the federal sector, as well as setting dangerous precedents which eventually create similar problems in the state, local, and private sectors. The scope of the legislation is too broad in dealing with the thousands of different work sites which constitute federal buildings, which would include the halls of Congress, and the different categories of federal workers.

We believe that smoking policies would best be determined on a case-by-case basis, reflecting both the wishes of the affected workers and characteristics of the work place, and not through arbitrary and rigidly imposed legislation. More specifically, we are concerned that the legislation makes no attempt to protect workers' rights. Furthermore, it undermines the principle of employee rights and participation in determining working conditions, and gives arbitrary powers to management. Workers who smoke will clearly be vulnerable to harassment and unfair treatment - and certainly, if the worker is a union activist.

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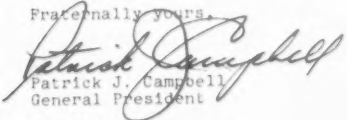
As you well know, the proposed legislation comes at a time when many of the existing structures to protect workers' rights have been severely overburdened or eroded. In the past five years there has been turmoil at the Department of Labor. Protections provided to private sector workers under the National Labor Relations Act have been diminished considerably. The Reagan Administration has repeatedly attacked the pay, job security, and rights of federal workers. The Office of Personnel Management has shown little interest in protecting those workers' rights. The grievance system is really the only remaining effective arena for supporting workers' rights in the resolution of on-the-job disputes. Senate Bill 1440 could jeopardize that system by overloading it with smoking disputes filed as a result of arbitrary management decisions, or zealotry on both sides of the smoking issue.

Furthermore, and perhaps most importantly, Senator Stevens' bill sets a dangerous precedent for arbitrary adoption of work rules. The legislation circumvents all mechanisms of due process, essentially modifying federal labor law in one sweeping move. Since the legislation is likely to serve as a model, this could have serious implications for unions representing workers in the state, local, and private sectors, as well as the federal sector.

Finally, we find it rather ironic that while Congress drags its feet in addressing present Safety and Health hazards like asbestos, toxic chemicals and inadequate ventilation in federal buildings, Senator Stevens rushes forward to "protect" workers from their fellow workers. One would think that these other problems - not tobacco smoking - would take priority. As you know, organized labor has worked hard to get the Congress to address these issues. The proposed legislation seems absurd in view of these other priorities.

Thank you for reviewing these points, and sharing them with members of the Public Employee Department. We would appreciate any help you can give us and the Bakery, Confectionary and Tobacco Workers International Union in opposing this unnecessary and potentially dangerous legislation.

Fraternally yours,


Patrick J. Campbell
General President

PJC:dev
opeiu#2 afl-cio

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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

1750 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006
 TELEPHONE NO. (202) 737-8484



John A. Gannon
 President

September 27, 1985

Alfred K. Whitehead
 Secretary Treasurer

John F. Leyden, Executive Director
 Federal/Postal Division
 Public Employee Department AFL-CIO
 815 16th Street, N.W.
 Washington, D.C. 20006

Dear John:

This letter is with regard to Senator Ted Stevens' (R-Alaska) proposed legislation which would restrict smoking to designated areas in federal government buildings (S1440). This legislation represents an effort to restrict smoking to specifically designated areas and as such may expose federal and postal workers to an arbitrary infringement of their collective bargaining rights. This sort of arbitrary adoption of work rules, including fines, as described in the bill, I believe, sets a dangerous precedent not only for federal workers but in the state and local government sectors as well.

I must express my understanding and appreciation for the attempt to protect the rights of non-smoking individuals, however, I also believe that the imposition of broad and rigid policy by these means is counterproductive to good labor management relations. I would prefer to see management meet with federal workers' representatives to discuss and implement any workplace regulations.

As an International Union that is very familiar with the dangers of exposure to smoke and toxic products, we also are committed to sound labor management relations practices. I hope these views will be of help to the department in opposing this type of legislation.

Fraternally,

John A. Gannon
 President

JAG:ed

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INTERNATIONAL FEDERATION OF

PROFESSIONAL AND TECHNICAL ENGINEERS

818 ROEDER ROAD, SUITE 702

/ SILVER SPRING, MD 20910

/ (301) 565-9016

September 20, 1985

Mr. John Leyden, Executive Director
Federal/Postal Division
Public Employee Department, AFL-CIO
815 Sixteenth Street, Northwest
Washington, D. C. 20006

Dear John:

IFPTE had not planned to take a position on Stevens' legislation S.1440 — regarding smoking in public places. However, on review of your correspondence on the subject, we do believe that it would be appropriate for PED to take a stand opposing the legislation. Obviously, the issue of smoking in public places is a sensitive one — and not one on which our members could reach consensus. Therefore, this question is best resolved on a work place by work place basis. Also, the issue is appropriately addressed in the collective bargaining arena. The matters over which federal employees may express themselves through collective bargaining are already very limited. Further restrictions are not welcome.

Fraternally,

RODNEY A. BOWER
IFPTE President

AFFILIATED WITH THE AFL-CIO: CANADIAN LABOUR CONGRESS PUBLIC EMPLOYEE DEPARTMENT METAL TRADES DEPARTMENT UNION
LABEL AND SERVICE TRADES DEPARTMENT INDUSTRIAL UNION DEPARTMENT AND DEPARTMENT FOR PROFESSIONAL EMPLOYEES

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ORGANIZED 1866



International Brotherhood of

FIREMEN & OILERS

JIMMY L. WALKER
INTERNATIONAL PRESIDENTMICHAEL A. MATZ
INTERNAT. UNCL. SEC. TREASURER122 C STREET N.W.
WASHINGTON, D.C. 20001
(202) 737-5300

September 20, 1985

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 ANTHONY OTTOBRE
 DAWN BONARD

Mr. John Leyden
 Executive Director of
 Federal/Postal Division
 Public Employee Department,
 AFL-CIO
 815 Sixteenth Street, N. W.
 Washington, D. C. 20006

Dear John:

This has reference to your recent communication regarding the proposed
 ban on smoking in public buildings.

Our Organization feels that this is not a smokers vs. non-smokers issue.
 It is an issue that infringes on our collective bargaining process and
 should not be part of the legislative process. We recommend the Public
 Employee Department take necessary action to voice Organized Labor's
 objections to this issue being decided in any manner other than collective
 bargaining.

With best wishes, I remain

Sincerely and fraternally,

Jimmy L. Walker
 Int'l. President

JLW:acs

AFFILIATED WITH AFL-CIO-CANADIAN LABOUR CONGRESS

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Tony R. Ruane
Executive Director
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Vice President
Burkard P. O'Connor
Secretary/Treasurer
Hollis Durbey
Assistant Secretary/Treasurer
Joseph H. Johnson, Jr.
Director of Public Affairs
William M. Dunn, Jr.
Director of Public Affairs



100 Indiana Avenue, N.W., Washington, D.C. 20001
Telephone: (202) 393-4685

Robert J. Buntz
Director, Health Insurance

Anthony B. Morelli
Assistant Director, Health Insurance

Mark Roth
Director of Retired Members

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James Worsham

September 16, 1985

Mr. John Leyden
Executive Director of Federal/Postal Division
Public Employee Department
AFL-CIO
615 16th St., N.W.
Washington, D.C. 20006

Dear John:

I am writing to express the concerns of the National Association of Letter Carriers regarding recently proposed legislation on smoking in United States Government buildings (Senate Bill 1440). This bill represents an effort to restrict smoking to specifically designated areas and, as such, exposes the federal and postal workers who spend their work lives in these facilities to potentially arbitrary infringement of collective bargaining rights.

If adopted, these regulations would threaten the collective bargaining process by allowing the alteration of federal labor law without regard for the deliberative processes established for that purpose. Indeed, the capricious adoption of such sweeping workrules sets a dangerous precedent -- one which will not only affect federal workers, but which will undoubtedly trickle down to state, local, and private sector workers.

We believe that the imposition of broad and rigid smoking policies by these means is counterproductive to labor relations. It both undermines the principle of employee rights and denies workers the opportunity to participate in the determination of their own working conditions. In fact, it also gives arbitrary enforcement powers to management. Instead of circumventing all mechanisms of due process, it would seem better to determine

OFFICE: 1 AMERICAN FEDERATION OF LABOR - CONGRESS OF INDUSTRIAL ORGANIZATIONS
2 PM - NATIONAL TELEPHONE TELEGRAPH INTERNATIONAL

smoking policies in each individual work place. Decisions made in this manner would be tailored to both the wishes of the affected workers and the specific characteristics of each location. Only by employee involvement in decision making, not by giving arbitrary powers to management, can lasting, amicable, and productive smoking policies be established in each work site.

I hope these views will be helpful to the PED in determining the consensus of union opinion on this issue.

Sincerely and Fraternally,

Vincent R. Sombrotto

Vincent R. Sombrotto
President

VRS/ces



**INTERNATIONAL UNION
OF POLICE ASSOCIATIONS
AFL-CIO**

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

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West Coast Regional Office • 224 E. Olive Ave. #301 • Burbank, Ca. 91502 • (818) 841-5426

Robert B. Kriesmer
President

Al Angelo
Secretary-Treasurer

September 16, 1985

Mr. Al Bilik
Executive Director
State/Local Division
Public Employee Department
AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006

Dear Brother Bilik:

On behalf of the International Union of Police Associations (IUPA), AFL-CIO, I am writing to express our opposition to Senator Ted Stevens' proposed legislation (S. 1440) that restricts smoking in all United States Government buildings. The legislation is unnecessary, severely undermines labor relations and imposes an unreasonable burden on enforcement resources.

Federal legislation on this issue is inappropriate for it establishes broad restrictions that ignore practical realities of specific worksites. Any problems concerning smoking in the workplace are best resolved between employer and employee. Individual employees should be encouraged to work out problems on their own based on common courtesy.

A number of workplaces have already established formal and informal workplace smoking policies as circumstances warrant. These policies address specific needs of individual worksites and have been established without mandatory legislation. Therefore, we question the necessity of broad legislation.

Moreover, the legislation severely undermines labor relations in the federal sector and would set a dangerous precedent in the state, local and private sectors. Smoking policies that affect union employees are a condition of employment and should be subject to collective bargaining agreements. In the union workforce smoking policies are best determined through collective bargaining on a case-by-case basis.

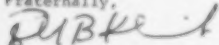
AFFILIATED WITH THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

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As law enforcement officers, we are especially concerned with the enforcement aspect of this legislation. We have found that enforcement of minor ordinances is an expensive and frustrating task for enforcement officers. Enforcement resources are far better directed toward more appropriate functions.

I appreciate your attention to our concerns with this proposal. We welcome any assistance you may offer in opposing this legislation.

Fraternally,



Robert B. Kliesmet
President

RBR/rf
IUPA/EA

ANGELO POSCO
General President

ARTHUR E. COIA
General Secretary-Treasurer

ROBERT J. CONNERTON
General Counsel

LABORERS' INTERNATIONAL UNION of NORTH AMERICA

905 - 14th St. N.W. WASHINGTON, D.C. 20006-1765
TEL. A/C 202-737-4320



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William Freeling, 2nd Vice President
Michael Levine, 3rd Vice President
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Gusman D. Shuman, 5th Vice President
D. P. Vassell, 6th Vice President
Joni D. Whigert, 7th Vice President
John Gervase, 8th Vice President

September 12, 1985

Mr. John Leyden, Executive Director
Federal/Postal Division
Public Employee Department, AFL-CIO
815 - 16th Street, N.W.
Washington, DC 20006

Dear Mr. Leyden:

I am writing you regarding Senate Bill #1440, introduced by Senator Ted Stevens. The Senator's Bill restricts smoking in all Federal Government buildings to designated smoking areas.

Senator Stevens seems to have his priorities mixed. How he can propose such ridiculous legislation as this, while important health and safety hazards like asbestos, toxic chemicals, carbon monoxide and other substances continues to be a threat to the total population, is beyond my belief.

Also, and just as serious, is how Senator Stevens is ignoring the long standing process of collective bargaining in the Federal Service. Smoking areas have always been a subject of collective bargaining. To arbitrarily remove it as an item for collective bargaining would be the beginning of the erosion of our labor-management relationship.

The Laborers' International Union of North America, along with its 500,000 plus members oppose this legislation. We urge the Public Employee Department of the AFL-CIO to oppose it in every way possible.

Thanking you in advance, I remain

Fraternal ally yours,

Angelo Posco
ANGELO POSCO
General President

/11

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Council 26/AFSCME

CAPITAL AREA COUNCIL OF FEDERAL EMPLOYEES
1029 VERMONT AVENUE, N.W., SUITE 510
WASHINGTON, D.C. 20005
TELEPHONE: (202) 393-5757

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Vice President
JAMES E. GLOVER
Treasurer
ISAAC C. CUMMINGS, JR.
Secretary

JAMES E. MUNDY
Executive Director
ALICE L. BODLEY
Assistant Director

September 12, 1985

John Leyden
Director
Federal/Postal Division
Public Employee Department
AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20005

Dear Brother Leyden:

AFSCME Council 26 wishes to urge your Department to vehemently oppose Senator Steven's Legislation, S 1440.

The Civil Service Reform Act provides that federal employees can negotiate basic working conditions through an exclusive bargaining agent. This legislation attempts to alter that process.

Council 26 is in no way taking a position regarding the merits of the legislation, but opposes the erosion of the collective bargaining process which is inherent in the legislation. We urge the Public Employee Department to continue its opposition to this type of legislation.

Sincerely & Fraternally,

James E. Mundy
James E. Mundy

in the public service

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
(AFL-CIO)

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Edward J. Carrough
General President

**SHEET
METAL
WORKERS'
INTERNATIONAL
ASSOCIATION**

1750 New York Avenue, N.W.
Washington, D.C.
20006
202-761-5880

September 3, 1985

Mr. Al Bilik
Executive Director
State/Local Division
Public Employees Department
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Mr. John F. Leyden
Executive Director
Federal/Postal Division
Public Employees Dept.
815 Sixteenth St., N.W.
Washington, D.C. 20006

Dear Sirs and Brothers:

Regarding your August 29 letter to me, we want to associate with its entirety the comments and sentiments expressed by President Winpisinger of the Machinists on August 19, President DeConcini of the Bakers on August 20, and President Campbell of the Carpenters on August 26.

S-1440 is just lousy legislation, and it should be opposed by the Department.

Fraternally yours,

EDWARD J. CARLOUGH
General President

EJC:tmf

cc: Ralph Willham
W. Winpisinger
J. DeConcini
P. Campbell

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Robert B. Kliesmet
President
Al Angelo
Secretary-Treasurer

Testimony of

ROBERT B. KLIESMET
PRESIDENT

of the

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO

before the

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, & GENERAL SERVICES

September 30, 1985

AFFILIATED WITH THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

TESTIMONY OF
ROBERT B. KLIESMET, PRESIDENT
INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES
SEPTEMBER 30, 1985

Mr. Chairman, Members of the Subcommittee on Civil Service, Post Office and General Services of the Governmental Affairs Committee, I thank you for the opportunity to give testimony concerning Senate Bill 1440 - legislation restricting smoking in U.S. Government buildings.

My name is Robert B. Kliesmet. I am President of the International Union of Police Associations, AFL-CIO. I am also President of the Institute for Police Research. I have been a guest lecturer at Harvard University's Kennedy School of Government, the University of Milwaukee School of Social Welfare, the University of Wisconsin Law School, Marquette University, Melbourne University Law School, the F.B.I. Academy, and at numerous seminars, symposiums, and workshops. I have contributed to numerous publications concerned with policing and law enforcement.

I will state at this time for the record that I and my Union are strongly opposed to the enactment of Senate Bill 1440, We are requesting that you give further study to two distinct

aspects of this proposed legislation. The first involves placing a federal mandate on what is historically a matter for labor negotiations, and secondly the utilization of law enforcement capabilities that are better directed toward more appropriate functions.

We have been concerned with smoking on the job, smoking breaks and other relevant issues regarding the use of tobacco for the last 50 years. It is, and continues to be, the subject of labor negotiations and contractual agreements between employees and employers. It has been successfully negotiated between the parties involved over this period of time. We see no breakdown in our capacity to negotiate this issue, nor do we sense any great pressure from our membership to waive its rights to negotiate and submit to a federal fiat.

The past 10 years have witnessed an increasing tendency on the part of the federal government to preempt the rights, duties and responsibilities that have traditionally existed between union members and their business and industry counterparts.

We believe the proposed legislation is a continuation of this undesirable trend. The relationship between a Union and its membership has, since its inception, been broad and encompassing. The relationship has always included health and working conditions as well as financial return for work done. In certain instances we have called upon the federal government to assist us in our endeavor, when anti-labor forces severely threatened our rights

to organize or serve our membership. This is not one of those instances. This legislative proposal removes from our jurisdiction a capacity to determine working conditions, a function that we have successfully negotiated in the past and can continue to negotiate. We have never been reluctant to call upon Congress for help when we perceive the need. It is not present in this instance.

In respect to assigning law enforcement agencies' obligations not commensurate with their traditional functions, we must again raise our objections. While it is true that the legislation as proposed is restricted to U.S. Government buildings, we are aware, and this Committee is aware, that Congressional action is viewed in its leadership capacity by the state, county, and municipal governments. While enforcement of a non-smoking law in federal buildings presents a serious enforcement problem to federal enforcement officers, the problem is compounded when the concept is transferred into non-federal governmental areas.

Few state, county, or municipal offices have more than minimal, if any, in-house law enforcement personnel. This necessitates the designation of state, county, or municipal police personnel to enforce these statutes. It has been our experience that moving law enforcement officers into public buildings, both governmental and private to enforce non-traditional law violations has been a time-consuming function which denies to the community at-large police services in areas of urgent demand.

We have in the past opposed legislation of this nature and we will continue to do so.

Mr. Chairman, we request that you and the Committee reconsider these issues, that you refrain from placing upon law enforcement the burden of additional regulatory functions, and that you further refrain from mandating federal interference in the right of labor and management to negotiate.

Thank you, Mr. Chairman, and members of the Committee for allowing me to submit this testimony.



GASP of Massachusetts

A chapter of Group Against Smoking Pollution

25 Deaconess Road, Harris Hall #421, Boston, MA 02215 • (617) 266-2088

TESTIMONY OF EDWARD L. SWEDA, JR., ESQ. BEFORE THE U.S. SENATE
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES,
IN SUPPORT OF SENATE BILL 1440.
SEPTEMBER 30, 1985.

I am Edward L. Sweda, Jr., an attorney and legislative agent for Group Against Smoking Pollution (GASP) of Massachusetts. GASP is a voluntary, non-profit organization dedicated to protecting the health and rights of nonsmokers -- the majority of the American population.

GASP supports S. 1440 -- the "Non-Smokers Rights Act of 1985". I will suggest some additional language to make the bill more protective of the right of the nonsmoker NOT TO BE FORCED TO SMOKE against his or her will.

S. 1440's finding that "numerous studies have shown second-hand smoke to be a significant health hazard" is entirely accurate.⁽¹⁾ These studies have shown that secondhand tobacco smoke -- which is a complicated array of chemicals, many of which are known carcinogens -- constitutes a serious and potentially life-threatening hazard to nonsmokers. So, when considering restricting smoking in federal buildings, Congress should do so not merely to reduce the annoyance or inconvenience that secondhand smoke inflicts on the nonsmoker but, rather, to prevent an unnecessary, serious and perhaps fatal hazard to nonsmokers.

(1)

Attached to my testimony is a bibliography of these medical studies.

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Therefore, I urge that section 3(b)(1)(A) which calls for "reasonable accommodations for the needs of the smokers and nonsmokers who use the Government buildings" be altered to set forth a policy that the right of a nonsmoker to breathe smoke-free air takes priority over the privilege -- not the right -- of a smoker to smoke in public. Despite what you may hear from representatives of the tobacco industry, there is no legal right -- whether by statute, by the Constitution or by common law -- to force other people to smoke against their will.

GASP also recommends that the regulations to be promulgated by the Administrator of the General Services Administration, the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives and the Administrative Office of the U.S. Courts be guided by specific language in S. 1440 to: 1) provide protection for nonsmokers from the health hazards of secondhand tobacco smoke; 2) spell out an enforcement mechanism to make sure that smoking does not take place in no-smoking areas; and 3) specify that the right to breathe smoke-free air takes priority over the privilege to smoke in public places.

So, GASP of Massachusetts urges this subcommittee to support S. 1440 and thereby protect nonsmoking workers and visitors in government buildings from the preventable health hazards of forced smoking.

Thank you.



SUMMARY

Selected Recent Medical Articles Re: Secondhand Smoke Hazards

EDITOR: M.A. Croner, M.D.
Clean Indoor Air Educational Foundation
25 Beaconess Rd.
Boston, Massachusetts 02215
(617) 732-9602

"Any health risk resulting from involuntary smoke exposure is a serious public health concern because of the large numbers of nonsmokers in the population who are potentially exposed. Therefore, for the purpose of preventive medicine, prudence dictates that nonsmokers avoid exposure to second-hand tobacco smoke to the extent possible."

U.S. Surgeon General's Report (1982)
"The Health Consequences of Smoking" Foreword

1. New York State Journal of Medicine July 1985. Vol 85, No. 7

An indoor air quality standard for ambient tobacco smoke in workplaces in the United States is derived based on limiting the involuntary carcinogenic risk to nonsmokers to the maximum level considered acceptable by federal regulatory agencies for environmental carcinogens in air, water, or food. To achieve acceptable risk, the daily average concentration of tobacco tar for a typical office must be at most 0.75 micrograms per cubic meter of air. At typical smoking occupancies for an office environment, achieving this standard would require impractical amounts of ventilation or prohibitive costs for air cleaning equipment. It appears that the only practical control measures are complete physical separation of smokers and nonsmokers on different ventilations systems, or prohibition of smoking in the workplace.

2. Environment International May, 1985 Vol. 11

This work, "A Quantitative Estimate of Nonsmokers' Lung Cancer Risk from Passive Smoking," was conducted by the Environmental Protection Agency, the report says that passive tobacco smoke is the country's most dangerous airborne carcinogen, causing an estimated 500-5000 lung cancer deaths in nonsmokers each year. Coke oven emission is the number two carcinogenic pollutant, said to cause up to 150 lung cancer deaths per year.

3. New England Journal of Medicine April 26, 1984. Vol 310 No. 17

This study of 31 infants under one year of age was conducted by the department of Pediatrics at the School of Medicine, University of North Carolina at Chapel Hill. The intent was to validate the existence of exposure to tobacco smoke objectively. The concentrations of nicotine and its major metabolite, cotinine, were significantly higher in the exposed group than in the unexposed group, with the best indicator of chronic exposure being the urinary cotinine:creatinine ratio. These results indicated that infants who were exposed to tobacco smoke absorbed its constituents and that urinary excretion of cotinine is a reliable measure of such exposure. These results lend further support to the concern about the effect of parental smoking on the well being of infants and children.

4. New England Journal of Medicine September, 1983. Vol. 309 No. 12

Researchers from Harvard Medical School provide evidence that children who live with smoking parents show an average of 7 percent less lung function than children of nonsmoking parents. This longitudinal study involving 1156 children from East Boston highlights the mother's smoking behavior as the more important, perhaps because mothers spend more time with their children. This reduction of lung development was evident when measured two years into the study, and remained so when measured for the subsequent five years. Such results may be important in the development of chronic obstructive disease of the airways in adult life in addition to increased childhood respiratory diseases.

5. American Journal of Obstetrics and Gynecology December, 1982. Vol. 144 No. 7

Passive smoking, exposure of the nonsmoker to air contaminated with tobacco smoke, has been reported to have several adverse health consequences. Findings from this study suggest that a pregnant woman's exposure to other's smoke (passive smoking) affects the health of her fetus. Fetal levels of SCN (thiocyanate), a metabolic byproduct of tobacco smoke and an effective biochemical marker of overall exposure, were elevated in those pregnant women exposed to ambient smoke in the home. Since earlier studies show adverse outcomes for the fetus if higher levels of exposure are recorded (if the mother smokes herself), this is an important subject warranting further study.

6. British Medical Journal January, 1981. Vol. 282

Results of a major 14 year study of 265,118 people in Japan show that nonsmoking wives who were exposed to their husband's cigarette smoke developed lung cancer and died at a much higher rate (two to four times) than nonsmoking wives of nonsmoking husbands.

7. International Journal of Cancer 1981. (27, 1-4)

This two year study of a smaller number of Greek women also

demonstrated a higher risk of death by lung cancer for a nonsmoking wife of a smoking husband. Estimates of the relative risk were also dose-related: the more the husband smoked, the higher the risk of death by lung cancer for the nonsmoking wife.

8. SCIENCE May 1980. Vol. 208

In this research study of public buildings in which smoking was permitted, the air pollution levels (respirable particulates) registered exceeded federal standards set by the EPA for outdoor air quality.

9. NEW ENGLAND JOURNAL OF MEDICINE March, 1980. Vol. 302 No. 13

Results of a ten year study of more than 2,000 people conducted in the workplace concluded that chronic exposure to tobacco smoking is deleterious to the health of nonsmokers. Measurements of previously recorded healthy nonsmokers showed a significant reduction in small airway function, equivalent to that expected in a smoker who smokes up to ten cigarettes a day. An accompanying editorial stated, "It (this study) constitutes a foundation to be used by health planners and legislative bodies to stimulate the search for a public policy that is not only equitable but based on irrefutable scientific evidence."

10. JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION May, 1978. Vol. 239 No. 20

In this article entitled "Nonsmokers' Rights: a Public Health Issue," the results of a literature search on the effects of involuntary smoking are presented. Reviewed are the specific hazards to high risk groups such as allergic and asthmatic persons, infants and children, and those with chronic heart and lung disease. Healthy nonsmokers also reported symptoms including headaches, coughing, and irritated eyes.

11. NEW ENGLAND JOURNAL OF MEDICINE July, 1978. Vol. 299. No. 1

In this study of patients diagnosed as having angina, exposure to tobacco smoke was found to significantly reduce their exercise duration time before experiencing the pain associated with angina.



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RESTRICTING SMOKING IN U.S. GOVERNMENT BUILDINGS:
RESTORING A FUNDAMENTAL RIGHT TO FEDERAL EMPLOYERS
AND THE VISITING PUBLIC

TESTIMONY OF
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SEATTLE UNIVERSITY

IN SUPPORT OF SENATE BILL #1440
"NON-SMOKERS RIGHTS ACT OF 1985"

BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
OF THE
SENATE OF THE UNITED STATES

SEPTEMBER 30, 1985
WASHINGTON, D.C.

RESTRICTING SMOKING IN U.S. GOVERNMENT BUILDINGS:
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Testimony of

William Weis, Robert Rosner, Timothy Lowenberg

Institute for Occupational Smoking Policy
Albers School of Business
Seattle University

In Support of Senate Bill #1440

September 30, 1985

Mr. Chairperson and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill #1440. Passage of this legislation will demonstrate the U.S. Government's commitment to restoring one of the most fundamental of all civil rights: the right to pursue one's livelihood in a safe and healthful environment. In addition, the Bill will guarantee that all citizens may visit public U.S. Government facilities without unwanted exposure to ambient tobacco smoke.

Fortunately, with or without leadership from the federal government, a growing number of private employers are recognizing that untrammelled smoking in the workplace constitutes a fundamental conflict with human rights, and they are responding with policies that either eliminate or severely curtail smoking in their organizations.

This trend toward more and stronger smoking restrictions is

certain to continue for reasons which we will cite later. In the meantime, however, the U.S. Government should exercise its duty as a public employer to guarantee that all its employees who desire a safe and healthful work environment be granted that basic right.

SUPPORTING THE TREND TOWARD WORKPLACE SMOKING POLICIES

The mandate to develop workplace smoking policies stems from several factors:

Employee Preference

Probably the most persuasive evidence arguing in favor of smoking restrictions is the cumulative result of several major employee surveys showing that smoking is today a prime source of irritation and discomfort among workers.

Comprehensive surveys conducted recently at Pacific Telephone, Pacific Northwest Bell, Army Corps of Engineers, and the City of Seattle document that nearly 80 percent of their employees (both smokers and nonsmokers) want to see smoking either banned or confined to separate smoking areas. Even a majority of smokers at each organization surveyed favor a complete ban or separate areas, confirming that the so-called controversy over workplace smoking restrictions is not a feud between "anti-smokers" (a term coined by the Tobacco Institute) and smokers, but between employees, both smokers and nonsmokers, and the American tobacco industry.

In response to these employee sentiments, Pacific Northwest Bell, employing over 15,000 employees in three states, will

completely ban smoking in all of its facilities after October 15, 1985. The Boeing Company, employing over 85,000, has also announced its intent to completely ban smoking at all of its facilities.

Nonsmoker Health Hazard

Another important reason cited by employers who have already banned or curtailed smoking on their premises is that enlightened organizations can no longer impose on their employees an environment which is known to be contaminated by hazardous substances. Reasonable men and women now recognize that involuntary smoking (i.e., breathing smoke of one's co-worker) is a serious health hazard, and that forcing employees to assume that hazard is an unconscionable accommodation to that minority of the workforce still afflicted with tobacco dependence.

According to James Repace of the Environmental Protection Agency, about one-third of non-smoking lung cancers are due to passive smoking, resulting in as many as 5000 deaths per year in the United States. A study published in the New England Journal of Medicine showed that nonsmokers working among smokers had pulmonary function levels equal to those of people who smoke one to ten cigarettes a day. And both the American Medical Association and the Surgeon General are convinced that so-called "sidestream" smoke poses a significant health hazard to nonsmokers.

Employers who have imposed workplace bans have, for the most

part, been sensitive to the problems encountered by smokers when faced with temporary withdrawal from a very powerful drug addiction (nicotine, according to Surgeon General Koop, is the most addictive drug in the U.S.). But the mandate to protect employees from exposure to a toxic substance supersedes the desire to accommodate an addictive behavior in the workplace, when that behavior threatens the health and comfort of co-workers.

Liability

Some organizations have resisted smoking control policies because they feared lawsuits brought by employees who smoke. They assumed that smokers have a "right to smoke" in the workplace. That assumption is not supported in the courts. There is no more a legal right to smoke in the workplace than there is a right to sing at the top of one's voice or to play a radio at high volume.

Courts from New Jersey to Washington State have supported, instead, the rights of employees to smoke-free working conditions. In a case decided back in 1976, a trial court ordered New Jersey Bell Telephone Company to create a smoke-free environment for one of its employees. The court declared: "The portion of the population which is especially sensitive to cigarette smoke is so significant that it is reasonable to expect an employer to foresee health consequences and to impose upon him a duty to abate the hazard which causes the discomfort."

In a landmark decision (Vickers v. Veterans Administration) handed down in 1983, Federal Judge Donald Vorhees ruled that an employee suffering the ill effects of sidestream smoke exposure is

a handicapped worker entitled to special work conditions under the Federal Rehabilitation Act of 1973. Needless to say, the federal government should be setting a model example in its own compliance with the Federal Rehabilitation Act.

Finally, employers should know that they are more likely to face litigation from nonsmokers than from smokers (in fact, there has been no successful litigation from smokers against companies that have properly implemented smoke control policies). Many of those lawsuits will demand more than merely a smoke-free environment. In California, for instance, a federal employee sued the U.S. Government because of an allergic reaction to tobacco smoke in her office. The courts granted her a permanent disability indemnity, \$20,000 in back pay, plus all expenses and attorneys fees. That seems hardly to be an efficient or effective use of federal tax dollars.

Productivity

Perhaps the least-often cited reason for restricting or prohibiting smoking in the workplace --- but, paradoxically, a reason that has attracted considerable interest in the popular press --- is to take advantage of the substantial cost savings available to a smoke-free business. Employers who have implemented strong smoking policies --- policies which ban smoking on company premises and restrict hiring to applicants who agree to be nonsmokers during working hours --- are reporting positive and envious productivity effects from the smoking restrictions.

These benefits accrue from such factors as lower rates of

absenteeism and turnover; reduced costs for fire, life, industrial accident, and health coverage; lower expenditures for routine cleaning and maintenance, property damage, and equipment and furniture replacement; greatly reduced rates of working-age mortality and early retirement; elimination of a major drain on employee efficiency -- the frequent informal smoke break; and reduced risk of costly litigation initiated by employees whose health is damaged by working in a smoky environment.

Employee Morale

The above factors alone can deliver cost savings measurable in terms of thousands of dollars per smoker per year to an organization that becomes totally smoke-free. Nevertheless, the most important benefit of a workplace smoking policy is enhanced employee morale. The direct costs associated with workplace smoking are collectively dwarfed by the indirect costs owing to impaired morale when employees are forced to tolerate what most believe today is an unjust, if not inhuman, imposition of irritating and toxic air contamination in their work areas.

TOBACCO INDUSTRY RESPONSE

This Committee will eventually receive testimony from paid lobbyists representing the Washington, D.C.-based Tobacco Institute. That testimony will attempt to confuse the issue by vague and, in some cases, inappropriate allusions to smokers' rights, difficulties in statute enforcement, government intrusion, and costs of compliance. Let's briefly examine these issues in

the context of the proposed legislation:

Smokers' Rights

Despite the Tobacco Institute's assertions, no one's "rights" are abridged unreasonably by a smoking ban at the workplace. All employees enjoy the same rights, which are, by reason, restricted to behaviors that do not infringe upon the rights of colleagues to a comfortable, healthful work environment.

When Western Electric Co. invoked the notion of smokers' rights in defending its denial of a smoke-free work area for employee Paul Smith (Paul Smith v. Western Electric, Missouri Court of Appeals), Suffolk University Law Professor Alvan Brody responded with a stinging analogy:

"If some of the defendant's (Western Electric) employees started pinching other employees, or slapping them on their buttocks, or spitting on their sleeves, or spraying ammonia about in small quantities, and the defendant knew of the practice and knew that the victims objected to it, surely the defendant would not be talking about pinchers' rights, or slappers' rights, or spitters' rights or sprayers' rights. It would put a stop to such practices, and quickly."

Certainly the U.S. Government does not want to abridge anyone's rights: not those of the smoker, pincher, slapper, spitter, or sprayer. It's just that some behavior is best practiced away from the workplace.

Statute Enforcement

Enforcement of the proposed legislation is enhanced by the rights which it conveys to those who would be victims of non-compliance. Unlike protecting other basic civil rights in the workplace, where unbiased observers may differ on whether a violation did or did not occur (e.g., discrimination based on sex

or race), there would rarely be an argument over whether an employee's right to work in a smoke-free environment was or was not being denied. In short, we have a tradition of enforcing far more difficult ordinances than the proposed legislation.

Government Intrusion

Even before arriving at the year "1984" we collectively acknowledged that government has a legitimate role in the affairs of man. In the United States that role was most succinctly defined by Thomas Jefferson nearly two centuries ago: "The function of government is to prevent people from injuring each other."

In that spirit we have legislated and enforced public health ordinances which directly "intrude" on public and private organizations and on the behaviors of individuals within those organizations. We are reminded of this every time we go to the bathroom at work: our employers not only must maintain plumbed facilities for these occasions, but must also enforce our utilization of those facilities. It is a reasonable "intrusion" that we all expect government to make to protect the public health.

With growing evidence of the health hazard to nonsmokers from exposure to tobacco smoke, we now expect government to protect us from this toxic pollutant at the workplace.

Cost of Compliance

The unsupported claim by the Tobacco Institute that employers

will face substantial compliance costs contradicts the testimony of numerous organizations that have already become smoke-free. The general comment from employers who have implemented strong smoking policies is that the costs of policy development and implementation are negligible; the economic benefits, by contrast, are prodigious.

The simple fact is that the Tobacco Institute hasn't visited or talked with very many smoke-free employers. Those of us who have agree that the cost-to-comply argument is specious.

SUMMARY

Senate Bill #1440, should it become law, will neither convey nor withdraw preferential rights. It will merely guarantee that all employees who wish to work in a safe, smoke-free environment will be entitled to that basic civil right.

The proposed legislation is reasonable, enforceable, and consistent with the role of the federal government in providing for the public health and protecting citizens from being forced to assume unnecessary risks. The U.S. Government should be leading, not lagging, other employers in this vital area.

Thank you for acting responsibly on this issue.

PERSONAL STATEMENT IN SUPPORT OF SENATE BILL S-1440 ("NON-SMOKERS RIGHTS")

I am a Federal employee working for the United States Veterans Administration. I have personally seen and experienced for many years the indoor cigarette pollution problems, and therefore I can testify to the urgent need for new Federal legislation such as the Senate Bill S-1440 to protect Non-Smokers' rights and health.

I realize your Senate Committee is going to receive many other letters, petitions and personal statements strongly requesting major restrictions on tobacco smoking in U.S. Government buildings. However, I want to point out that cigarette smoking and it's primary byproduct "Second-Hand" smoke (also known as "Passive Smoke") is a very serious health problem to many non-smokers working in the government, including myself.

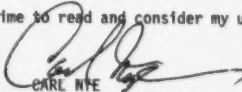
Most of my non-smoker coworkers frequently complain also about the health hazards and poor interior air quality due to interior air pollution and contamination generated from tobacco smoking. We work down in the basement of the V.A. Central Office where there are no windows and not much ventilation. Really, some of us call our work areas a "Gas Chamber", the pollution level is so bad. The work area assigned for our department is divided into informal smoking and non-smoking sections. But unfortunately, there is no protective physical wall or partition to effectively separate and divide the two sections from each other. When you have twenty (20) workers confined to a small, crowded and poorly ventilated room, the cumulative result is a big tobacco smoke cloud that grows each work day, still remains in the work room, and gets thicker and more irritating to non-smokers during each day's working hours.

Our health records are probably the worst in the entire V.A. organization. While many of my coworkers are frequently forced to be absent from their jobs due to the unhealthy poisoned air in our workplace, there is at present nobody to turn to for recognition and enforcement of our environmental rights and health needs. Therefore, our only practical recourse under these unsatisfactory conditions and ineffective agency regulations is to continue to use Sick Leave from our jobs in order to periodically and adequately clear our lungs. This practice unfortunately increases absenteeism, and adversely impacts everybody's productivity. Also, forcing non-smokers to be involuntarily exposed to Second-Hand and Passive smoke causes poor employee morale.

Senators, I want you all to know that we the non-smokers in the Federal government need your help desperately now, and the only real and effective way we can get that help is by a strong Federal Law being enacted now by the United States Senate.

My fellow non-smoker co-workers and I pray that this proposed S-1440 Bill will be enacted into law before we pass away ourselves. I realize this objective is just a dream to some people, but this much-needed restriction on smoking is much nearer to realization than smokers may think.

Thank you in advance for taking the time to read and consider my urgent plea for help from the United States Senate.

 9/19/85
CARL NYE

Computer Systems Analyst
U.S. Veterans Administration

CC: Senator Charles Mathias
Senator Paul Sarbanes